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ABSTRACT

This document discusses strategies for meeting the special education needs of Colorado students who are culturally and linguistically diverse (CLD) and who may have a disability. It begins with a case example of the challenges of serving CLD children with disabilities, a glossary of acronyms and key terminology, and basic principles underlying professional development for meeting the needs of students who are CLD. Section 1 provides information on legislative and judicial mandates concerning CLD students and special education and provides an overview of special education in Colorado. Section 2 outlines steps to identify and assess referral of CLD students to special education. Section 3 provides guidelines for evaluating a CLD student with a suspected disability, including assessment guidelines for cognitive functioning, speech and language functioning, academic functioning, social/emotional/adaptive behavior functioning, physical functioning, transitional/life skills functioning, and for determining eligibility for students with perceptual and communicative disability. The effective use of interpreters and translators is also addressed. Appendices include information on using the student record to gather information, the family interview, classroom consultation, and basic requirements and examples for conducting a district file review. (Contains 41 references.) (CR)

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Special Education for Culturally and Linguistically Diverse (CLD) Students:

Meeting the Challenges, Realizing the Opportunities

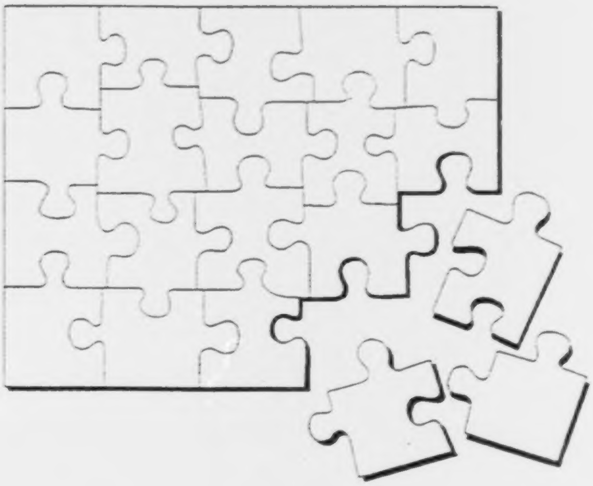

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TABLE OF CONTENTS

Acknowledgments i
Foreword ii
Acronyms, Key Terminology, and Legal Provisions iii
Basic Principles Underlying Professional Development on Special Education and Students Who are Culturally and Linguistically Diverse (CLD) iv

I. **Introduction and Overview** 1

Legislative and Judicial Mandates Concerning CLD Students and Special Education 2
Overview of Special Education in Colorado 5

II. **Guidelines for the Appropriate Referral of CLD Students to Special Education** 13

Steps to Identify and Assess the Proficiency of Students Who are CLD 13
Step 1 - Parent Checklist 13
Step 2 - English Language Proficiency Assessment 14
Step 3 - Student Placement 15
Step 4 - Concern About Learning/Behavior 16
Step 5 - Classroom Interventions 16
Step 6 - Special Education Referral 19
Step 7 - Special Education Identification Process: Assessment and Determination of a Disability 19
Step 8 - Specialized Instruction and Support 20

III. **Guidelines for the Evaluation of CLD Students** 23

Evaluation for a Suspected Disability 23
General Assessment Guidelines 24
Assessing Cognitive Functioning 30
Assessing Speech/Language Functioning: Language Difference or a Disability? 35
Assessing Academic Functioning 41
Assessing Social/Emotional/Adaptive Behavior Functioning 44
Assessing Physical Functioning 45
Assessing Transitional/Life Skills Functioning 45
Determining Eligibility for Students With Perceptual and Communicative Disability (PCD) . . . 46

Effective Use of Interpreters and Translators 53
Selecting Interpreters and Translators 53
Training Interpreters and Translators 56
Translating Assessments 57

IV. **Appendices**

Appendix A - Using the Student Record to Gather Information
Appendix B - Family Interview
Appendix C - Classroom Consultation, Interview, and Observation
Appendix D - Ensuring FAPE: Basic Requirements and Examples for Conducting a District File Review
Appendix E - U.S. Department of Education, Office for Civil Rights, May 25, 1970 Memorandum Regarding the Identification of Discrimination and Denial of Services on the Basis of National Origin
Appendix F - Bibliography

TABLE OF EXHIBITS

Exhibit 1	Special Education Steps for the Referral and Evaluation of Students Whose Primary or Home Language is Other Than English and Who May Have a Disability	6
Exhibit 2	Special Education Assessment	7
Exhibit 3	Information Gathering Matrix for Special Education Assessment	24
Exhibit 4	Pre-Referral and Referral Recommendations to Ensure a Free and Appropriate Public Education for CLD Students	25
Exhibit 5	Summary of Considerations in Assessment Interpretation	29
Exhibit 6	Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP)	36
Exhibit 7	Stages of Second Language Acquisition	37
Exhibit 8	A Model Speech and Language Assessment Protocol for Students Who are CLD	40

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Special Education and Students with Limited English Proficiency: Opportunities and Challenges

Foreword

Marta and Vanakan are two students in one of Colorado's Middle Schools. Although they are in the same grade and have the same teachers and curriculum, their backgrounds and needs are very different.

Marta is from a small town in rural Mexico. Her family immigrated to Colorado in search of occupational, as well as educational opportunities. In Mexico, Marta's school attendance was sporadic. When she was not watching her younger siblings she was helping her parents support the family. Therefore, her lack of educational experience is manifested in deficient Spanish literacy skills and content area knowledge. Since immigrating to Colorado a year ago, she has struggled with her school work and has only acquired some basic English phrases and words.

Vanakan is from Vientiane, the capitol of Laos. There he consistently attended school and devoted additional time to his studies at home. When Vanakan was in the fourth grade, his family had to flee Laos due to political persecution. Upon fleeing Laos, Vanakan and his family were placed in a relocation camp in Thailand. During the year spent in the relocation camp, Vanakan received English language instruction. As a result, he understands basic English when spoken to directly and slowly. Since his education was interrupted, his academic skills are less developed than those of his seventh grade peers. He possesses good basic skills, but there are gaps in higher level performances.

Both Marta and Vanakan receive 45 minutes of English as a Second Language (ESL) instruction daily to help them develop their English language skills. During the time they receive ESL instruction, the rest of the seventh grade class is receiving language arts instruction. This year the focus is on several important contemporary short stories. In order to provide students with the opportunity to relate the knowledge gained in one class to content in another, the language arts teacher has coordinated her content and focus with that of the social studies teacher. These two students are missing important content and concept development while away from their class.

Since the middle school they attend is small, both Marta and Vanakan have been assigned the same classes. In social studies, the teacher starts with a lecture linking the material the class is studying with the readings from their language arts class. This is followed by a brief discussion and an activity requiring students to answer questions related to the lecture. Currently, the social studies class is studying the Declaration of Independence. By comparing the struggles the colonists had with the English monarchy to the civil rights movement of the twentieth century, the teachers hope to give the students greater understanding of both social/historical movements. However, Vanakan and Marta are unfamiliar with George Washington, Thomas Jefferson, Martin Luther King, the Declaration of Independence, and the civil rights movement; and their previous school experience has not provided them with knowledge of these U.S. "icons." The teacher wants to be fair to everyone in her class, so all students must do the same work and take the same quiz every Friday. Marta and Vanakan consistently fail the weekly exams.

In science, the students are studying electricity. The teacher uses experiments to teach many of the concepts. He first explains the experiment and gives oral instructions on how to conduct it. Then he has students work in pairs. He paired Marta and Vanakan together so they could help each other and so that he could provide focused assistance to them. However, there are so many other students who need help that it is difficult for him to work individually with them. When he does have a minute, he is unsure about how to communicate with students who have such limited English. Usually, the experiment is only half completed when the two students drift off to work on their own or start to do other things.

To make matters worse, some of Marta and Van's classmates are beginning to make fun of them. Their inability to speak English and their seemingly aloof attitudes are causing others to mock them behind their backs. Marta often sits alone in the back of the room sketching pictures of her friends and family. Van seems to be in a world by himself, rarely talking, smiling, or interacting with the other students.

The teachers are frustrated. These students lack the prior knowledge, skills, and information that the other students have, so they can't participate in class activities or discussions. They can't follow directions and don't seem to pay attention in class. The teachers also have noted that their behaviors are becoming problematic.

The school staff is beginning to question if they have been nutritionally deprived. After all, they are both from poor countries; maybe that has affected their ability to learn. Maybe they were neglected or abused while in their native countries. Could they have a learning disability, attention deficit disorder, or an emotional problem? Perhaps a hearing loss? After all, who knows what kind of conditions these students lived in when they were younger. Perhaps a referral to special education would be the best thing to do—then they could each get the extra help they need!

Is a referral to special education the best thing for Marta and Vanakan? Due to lack of experience with children from diverse cultures, the teachers quickly conclude that perhaps one or both of them may have a disability. On the other hand, they worry about whether or not they are being hasty and wonder whether the students' difficulties might be attributable simply to a lack of prior educational experience and preparation, the cultural differences between home and school, and/or their limited English proficiency.

Teachers, administrators, special educators, and special service providers must consider many issues if they are to appropriately identify the educational needs of Marta and Vanakan. This manual is written to provide information and suggestions for effectively and legally meeting the needs of Marta, Vanakan, and the thousands of other students in Colorado who speak a language other than English, are limited in English proficiency, and who may or may not have a disability. We hope it will be helpful.

In the section to follow, acronyms and key terminology are presented as a tool to help educators clarify the issues on how best to meet the challenges and realize the unique opportunities presented to help students who are culturally and linguistically diverse meet high standards and achieve successfully on assessments of performance.

Acronyms and Key Terminology

The acronyms and key terminology to follow are operational definitions that will be used consistently throughout this document. While other definitions exist, these terms encompass the issues and concepts affecting students in Colorado who are culturally and linguistically diverse and who may have a disability.

Acronyms

ADA	Americans with Disabilities Act of 1990
BICS	Basic Interpersonal Communication Skills
BOCES	Board of Cooperative Educational Services
CALP	Cognitive Academic Language Proficiency
CDE	Colorado Department of Education
CLD	Culturally and Linguistically Diverse
ESL	English as a Second Language
FAPE	Free and Appropriate Public Education
IASA	Improving America's Schools Act
IDEA	Individuals with Disabilities Education Act
IEP	Individual Educational Plan
LEP	Limited English Proficient
OCR	U.S. Department of Education, Office for Civil Rights
OSERS	U.S. Department of Education, Office of Special Education and Rehabilitation Services
PCD	Perceptual-Communicative Disability
PHLOTE	Primary or Home Language Other Than English
SPED/LEP	Special Education/Limited in English Proficiency

Key Terms

Alternative Language Program - An instructional approach designed to increase LEP students' English language proficiency and to develop content area knowledge. Two examples are an ESL program and bilingual education.

Bilingual Education - Typically describes an instructional program for students that makes use of their native language(s), but also may describe programs for LEP, bilingual, and/or monolingual students that foster the use of the native language and English. Two types of bilingual programs that are most common are ***dual language (or 2-way) programs*** in which students develop language proficiency and study content in two languages and ***transitional bilingual education*** in which the native language is used initially for content instruction until students learn sufficient English to transition into a classroom in which English is used as the medium for instruction.

Cultural Mediator - Any individual who is a valued member of the community with knowledge and understanding of the target language and culture.

Dominant Language - The language with which the speaker has greater proficiency and/or uses most frequently.

English as a Second Language (ESL) - An educational approach in which CLD students are instructed in the use of the English language based on special curricula that typically involve little or no use of the native language. ESL usually is taught during specific school periods.

Free and Appropriate Public Education (FAPE) - As a guaranteed right under the Individuals With Disabilities Education Act, FAPE assures that all students have equal access to quality programs of instruction and that parents have rights including the participation in meetings with respect to their child's identification, evaluation, and Individual Education Program (IEP) planning and placement. An eligible child with a disability has a right to receive a FAPE that is specified in his or her IEP.

Improving America's School Act (IASA) - Instituted in 1994, the IASA is a key piece of legislation that reauthorizes the Elementary and Secondary Education Act of 1965 and includes significant mandates such as Title I (Helping Disadvantaged Children Meet High Standards), Title II (Eisenhower Professional Development Program), and Title VII (Bilingual Education, Language Enhancement, and Language Acquisition Programs).

Limited English Proficient (LEP) - As a term used for students whose primary or home language is other than English, LEP students are limited in their ability to speak, read, comprehend, and/or write English proficiently as determined by objective assessments. Depending on the context, other terms used for LEP include culturally and linguistically diverse (CLD), language minority or national minority status, second language learners, and new speakers of English.

Native Language - Also known as the *home language*, the native language is the first language learned in the home and often continues to be the stronger language in terms of competence and function.

Primary or Home Language Other Than English (PHLOTE) - A PHLOTE student may be bilingual, limited in English proficiency, or monolingual in the home language or in English. In Colorado, a PHLOTE student is identified when any response on a parent checklist is "yes" indicating that a language other than English is used in the home, the student's first language was other than English, or a student speaks a language other than English.

Basic Principles Underlying Professional Development on Special Education and Students Who are Culturally and Linguistically Diverse (CLD)

As professional who strive to meet the needs of students who are culturally and linguistically diverse and who may have a disability, we base our practices on the following principles:

1. We respect and honor the cultures and languages of all children and youth, and of their families.

2. We believe that what we learn about the languages and cultures of our students and their families challenges our thinking and enriches our lives personally and professionally.

3. We know that understanding and meeting the needs of the diverse learning community requires us to be life-long learners who participate in ongoing professional development.

4. We appreciate that the most important tools we have to understand and meet the needs of the diverse learning community are our knowledge, unique perspectives, and commitment to our students. Psychometric tests, teaching packages, and special programs are utilized best when we use our skills to tailor them to fit the unique needs of learners.

5. We are knowledgeable advocates, willing and skilled to help make changes in order for all learners to be successful. This is especially important in the case of CLD students who are at greatest risk of not meeting high standards if schools are not prepared to deal with differences in learning styles and behavior related to cultural and linguistic diversity.

6. We conduct assessments for the determination of special education eligibility with include:

    ✔ formal assessment only after careful consideration of the current situation and previous interventions;
    ✔ a variety of information, collected using various strategies and tools that reflect multiple perspectives of those who know the child; and
    ✔ careful consideration of each learners' cultural and linguistic background to determine appropriate uses from standardized tests and to arrive at meaningful and valid interpretation of results.

7. We make sound decisions aimed at helping each learner be successful. Decisions reflect:

    ✔ information that is gathered using non-biased, nondiscriminatory procedures and tools;
    ✔ decision making by teams composed of members with expertise in various disciplines including second language acquisition;
    ✔ respect for families in the decision making process for their children, and the provision of opportunities for family involvement in every step; and
    ✔ the use of carefully selected and trained interpreters, translators, and cultural mediators from the community.

8. We work collaboratively, focusing on the whole child, to meet each individual's needs and develop the special talents of every learner.

Section I
INTRODUCTION AND OVERVIEW

This guidebook is designed especially for educators and administrators who are responsible for ensuring that students who are culturally and linguistically diverse (CLD) and who may have a disability achieve high standards. In Colorado public schools, more than 30,000 CLD students have been identified as being limited in English proficiency (LEP). These students come from over 100 nations and collectively speak over 90 distinct languages and dialects.

Coming from diverse ethnic, cultural, social, and educational backgrounds, these students bring their own unique and individual experiences to our classrooms. Some CLD students are well-educated, having had the best educational opportunities available in their home countries, while others are not literate in any language. Some come from financially secure, stable home environments, while others are highly mobile, following work throughout Colorado and beyond its borders. Some have left their country of origin by choice; others have fled due to political turmoil. Some have lived in Colorado for generations, preserving their language, traditions, and cultural heritage.

Culturally and linguistically diverse students face a daunting task not encountered by students already proficient in the English language. In addition to the challenge of learning a new language, CLD students are confronted with learning the core academic curriculum in a language they do not fully understand. This task is all the more difficult when teachers are not equipped with the instructional strategies and methodologies needed to assist CLD students in understanding the content through use of the students' primary language by making English comprehensible to match the students' developing language skills. Furthermore, time devoted to English language development is, more often than not, time away from content instruction being delivered to CLD students' monolingual English peers, thereby increasing the achievement gap between CLD and non-CLD students.

These challenges, as well as the diversity in languages, experiential backgrounds, and cultures found in Colorado's CLD student population, have presented difficulties for school districts in providing appropriate instruction, and/or educational opportunities. Furthermore, recent data suggest an increase in the referral to, and placement of, CLD students in special education (Ortiz, 1995). Certainly, students who speak languages other than English have a right to services in special education if they do have a disability. **But if they do not have a disability, a special education placement is inappropriate, as well as illegal.**

Care must be taken to distinguish between a learning disability and a learning difficulty attributable to linguistic, cultural, and experiential differences. Our goal is to ensure that students receive the services that most appropriately address their individual learning needs. We realize that this is at times a difficult task; nevertheless, school districts are required, under various legislative and judicial mandates, to provide equal educational opportunities to limited English proficient students.

The section to follow provides a brief review of the legal provisions that support the appropriate identification, placement, instruction, and monitoring of CLD students. These provisions form the foundation for decision- and policy making to support the appropriate education of *all* students.

Legislative and Judicial Mandates Concerning CLD Students and Special Education

Title VI of the Civil Rights Act of 1964 and its Regulations at 34 C.F.R. Part 100

Title VI of the Civil Rights Act of 1964 states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Specific discriminatory actions include: the denial of services which are different, or provided in a different manner, from that provided to others in the program; subjection to segregation or separate treatment related to services; and the denial of the opportunity to participate in the program through the provision of services which are different from those afforded others under the program.

May 25, 1970 Memorandum

In an effort to clarify the requirements outlined in Title VI of the Civil Rights Act of 1964, the Department of Health, Education and Welfare issued the May 25, 1970, Memorandum. The memorandum reads in part, "Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." It further states that school districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills. The memorandum also requires school districts to notify parents (in a language that they understand) of school activities which are called to the attention of other parents. Appendix E contains the complete text of the May 25, 1970 Memorandum.

Individuals with Disabilities Education Act (IDEA)

In order to understand the rights, privileges, and challenges related to special education and students with limited English proficiency, it is necessary to consider the content and purpose of Federal and state special education legislation. The rights and privileges guaranteed to students with disabilities and the obligations of schools to offer those were officially mandated by the Federal Government in 1976 through passage of Public Law 94-142. That law was revised in 1990, and again in 1997, and currently is referred to as the Individuals with Disabilities Education Act.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. □□ 12131-12161

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against any qualified individual with a disability. As outlined in its regulatory references, qualified individuals with a disability must fall into one, or more, of the following three categories.

- Individuals who *have* a physical or mental impairment that substantially limits one or more major life activities.

- Individuals who have a *record* of a physical or mental impairment that substantially limited one or more or the individual's major life activities.
- Individuals who are *regarded as having* such an impairment, whether they have the impairment or not.

Title II of the ADA covers programs, activities, and services provided by public entities. According to the law, a public entity is defined as any State or local government department, agency, special purpose district, or other instrumentality of a State or local government.

Section 504 of the Rehabilitation Act of 1973 and its regulations at 34 C.F.R. □ 104

With passage of the Rehabilitation Act of 1973, Congress required that federal fund recipients make their programs and activities accessible to all individuals with disabilities. It protects persons from discrimination based upon their disability status as defined below. A person is disabled under the definition of Section 504 if he or she:

- has a mental or physical impairment which substantially limits one or more of such person's major life activities;
- has a record of such impairments; or
- is regarded as having such an impairment.

There has been much confusion regarding the relationship between Section 504 and special education laws and regulations. **It must be emphasized that Section 504 is a general non-discrimination provision and falls under the responsibility of both the regular and special education programs.** The school staff and parents need to work collaboratively to help guarantee that the student is provided with the necessary accommodations and/or services. A student who is found to be disabled under Section 504 should be served by the staff and resources of the regular education program and/or the special education program as appropriate to his/her needs. The student who has been determined disabled also may be eligible for special education under the Individuals with Disabilities Education Act (IDEA) based upon the categorization of his/her disability and the severity of his/her need. Such a student would receive special education and accommodations required under Section 504, IDEA, and/or the ADA.

It also should be noted that, under Section 504, the parents or guardian must be provided with notice of actions affecting the identification, evaluation, or placement of the student. They are entitled to an impartial hearing if they disagree with district decisions in those areas. For students who are not covered by IDEA, a Section 504 hearing will have to be made available. Some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to rights under Section 504 even though they may not fall into IDEA categories and may not be covered by special education law. (CDE, 1993)

Lau v. Nichols

In January 1974, the Supreme Court of the United States decided a class action case against the San Francisco school system. The case *Lau v. Nichols* alleged that the school system failed to provide students of Chinese ancestry with English language instruction or other adequate instructional procedures, thereby denying them a meaningful opportunity to participate in the public educational program. In deciding the case the court stated, **"There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."**

Castañeda v. Pickard

In 1981, the United States Fifth Circuit Court of Appeals heard the case of *Castañeda v. Pickard*. The court developed a three-prong test for evaluating compliance with non-discrimination provisions. First, it ruled that schools must have an educational program based on a legitimate theoretical foundation for language minority students. Second, the program must be implemented in a manner that is reasonably calculated to be effective and evaluated to determine if it is educationally beneficial. And third, if it is shown to be ineffective in overcoming language barriers, it must be modified accordingly. The court realized that while learning the English language, LEP students may incur deficits in content-area knowledge. Therefore, the court stated that schools have an obligation to remedy any deficiencies in academic areas while leaving "schools free to determine the sequence and manner in which limited English speaking students tackle this dual challenge so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system."

Exceptional Children's Educational Act C.R.S. 2220-R-1.00

Colorado also has a special education law that mirrors the Federal law (Individuals With Disabilities Education Act) in mandating certain rights and services for students with disabilities. Both of these laws were passed with the intent of ensuring that students with disabilities have access to a free and appropriate public education (FAPE) in the least restrictive environment (LRE). In order to accomplish this, the laws identify due process procedures to objectively determine eligibility, with the result that qualified students have protected class status guaranteeing an individualized educational program with special education supports and services. In addition, these due process procedures protect students who are experiencing learning or behavioral challenges but who are not disabled from being inappropriately labeled and placed.

Parity of participation should be the goal of any educational program designed for students with limited English proficiency. In many cases, CLD students have been provided with a less than adequate education. An equal educational opportunity should be ensured through a sound education model that addresses the English language and educational content needs of CLD students supported by sufficiently qualified teachers, materials, and equipment.

Special education has become one of the first supports considered by some in helping CLD students overcome academic deficits. Educators who do not understand the language acquisition process or the differences between the home and school cultures may refer CLD students on the basis of behaviors that do not fit their expectations. This leads to students being referred for evaluation for reasons other than the consideration of a disability. For example, referrals may be made primarily so that students can receive extra English language skills assistance--an approach that is both discriminatory and illegal.

Culturally and linguistically diverse students who are referred to special education are sometimes declared eligible for services based on test scores that reflect language differences, not a learning/language disability, limited learning capacity, or emotional disturbance. At the same time, CLD students should participate in all services for which they qualify. CLD students with disabilities generally will need to participate both in an alternative language program and in special education services. In their past investigations, the Office for Civil Rights (OCR) has found some districts that were not providing the needed services due to an unwillingness to refer any CLD student to special education services for fear of inappropriately labeling the students.

Colorado English Language Proficiency Act (ELPA) - Senate Bill No. 462

The ELPA Act strengthens federal requirements by authorizing funds and establishing an English language proficiency program in the Colorado public schools for children whose dominant language is not English. Under ELPA, districts must use parent and teacher checklists to identify potential limited English proficient (LEP) students from the population of students whose primary or home language is other than English (PHLOTE). Further, signed and dated checklists must be on file for all PHLOTE students. Districts with students identified as being eligible for ELPA funding are responsible for providing alternative language services such as ESL or bilingual education. Funding for LEP students is available for a maximum of two years under the ELPA Act.

Overview of Special Education in Colorado

Colorado has developed a framework for special education (and has recommended standard forms in place for Colorado's special education process) that provides a firm foundation for equity and effectiveness. Our approach to the education of students with disabilities differs from other states in three substantial ways: 1) philosophy; 2) services; and 3) planning process.

1. Colorado Philosophy - In Colorado, we believe that special education is a process that should be used to determine the individual needs of students and coordinate resources from the school, family, and community to meet those identified needs. In addition, special education addresses the physical, social/emotional, communicative, and cognitive needs of students as well as their academic and life skills. Thus, special education is concerned with the development of a child/youth in all functioning areas, and there is no distinction between instructional and related services, since both are educational.

2. Colorado Services - Once a student is determined eligible for special education, an individual education plan is developed by establishing the needs in each of the functioning areas and then coordinating sets of services. A student who is eligible for special education services may receive services from anyone who has the skills to meet the student's identified needs. This contrasts with the more traditional approach of labeling a disability and placing a student in a specific program, served only by a person with expertise in the disability.

3. Colorado Process - Colorado's special education process for the referral and evaluation of students whose primary or home language is other than English and who may have a disability (see Exhibit 1) also reflects the basic needs-based approach. Prevention is the first step of the process. At the point when concern arises about the child, parents and school personnel problem solve and plan appropriate prevention strategies. If there is still a

problem after these strategies have been tried and the results tracked, then a referral to special education may be appropriate. At this point, parent permission is obtained for a special education assessment to determine the student's needs, eligibility for special education, and services to be provided.

Exhibit 2 is a schematic of the special education assessment process. Both formal and informal evaluations are required that must be conducted by professionals trained in each area and skilled in administering the assessments. The focus is to identify students' current level of functioning in the areas of educational achievement; life skills/career/transitional performance; and communicative, social/emotional, physical, and cognitive functioning. In addition, information about how the student functions in school, home, and the community is required to obtain a balanced understanding of strengths and needs.

Exhibit 1

Special Education Steps for the Referral and Evaluation of Students Whose Primary or Home Language is Other Than English and Who May Have a Disability

Step 1
Parent Checklist

Step 2
English Language Proficiency Assessment

Step 3
Student Placement

Step 4
Concern About Learning/Behavior

Step 5
Classroom Interventions

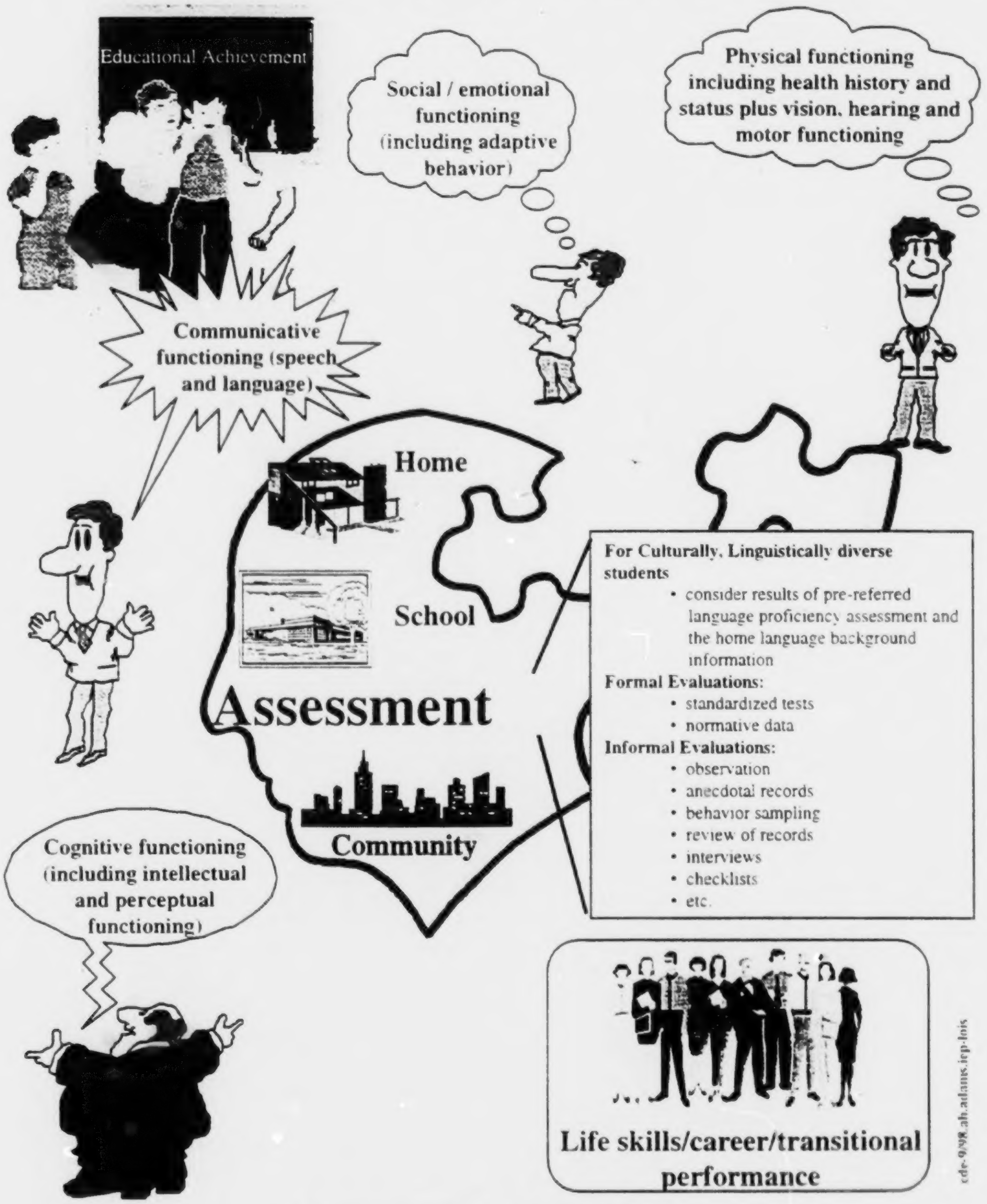
Step 6
Special Education Referral

Step 7
Special Education Identification Process

Step 8
Specialized Instruction and Support

Exhibit 2
Special Education Assessment

Special Education Assessment



Educational Achievement

Social / emotional functioning (including adaptive behavior)

Physical functioning including health history and status plus vision, hearing and motor functioning

Communicative functioning (speech and language)

Home

School

Assessment

Community

For Culturally, Linguistically diverse students
- consider results of pre-referred language proficiency assessment and the home language background information

Formal Evaluations:
- standardized tests
- normative data

Informal Evaluations:
- observation
- anecdotal records
- behavior sampling
- review of records
- interviews
- checklists
- etc.

Cognitive functioning (including intellectual and perceptual functioning)

Life skills/career/transitional performance

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Following the model illustrated in Exhibit 2, student assessment data must be collected within 45 school days after initiation of the process. At that point, a team consisting of the parent(s), the student (if appropriate), the professionals involved in the assessments, appropriate administrators, and general educators meet to undertake the planning process. The following procedures will help ensure that CLD students have access to an appropriate education.

- Determine the present levels of:
    - physical functioning;
    - social/emotional functioning;
    - cognitive functioning;
    - communicative functioning;
    - academic functioning; and
    - life skills/career/transitional functioning.
- Determine strengths and needs based on the assessment information.
- Determine whether there is evidence that the student has a disability based upon appropriate and valid evaluation techniques.
- Determine whether the disability interferes with the student receiving reasonable benefit from general education.
- Determine annual goals and short term measurable instructional objectives.
- Identify appropriate services (nature, scope, and intensity).
- Recommend placement in the least restrictive environment.
- Identify the specific general and special education services that are to be provided.
- Determine the date for initiation and duration of services.
- Identify where the services will occur and who the service providers will be.

Schools in Colorado are required to follow specific federal and state procedures to identify, place, and serve any student who may qualify for special education and/or Section 504 protections, and to proceed cautiously in not labeling a student as qualifying for special education or 504 if the student does not have a disability. The laws are written to provide protection of students' rights—both for appropriate services if needed and from unfair and perhaps discriminatory placement if there is no disability. In addition, the Colorado process-based model of special education provides a framework for providing appropriate, needs-based services for students who are referred to special education.

All students in Colorado, regardless of ethnicity, dominant language, or culture, are protected by these two sets of laws. Whatever is required by the laws holds for every student. However, students who speak languages other than English offer a unique set of challenges in determining eligibility for special education because language and cultural differences make determination of a disability more complex. As a result, there is the double danger of over-identification and under-identification (e.g., using special education as a second language acquisition/remedial education program or not providing adequate services for students with disabilities who are not fluent English speakers).

To ensure that students whose native/home language is other than English are properly placed into special education, districts are required by law to carry out the following procedures:

- Involve bilingual education staff in the special education identification, planning, and placement process.
- Consider and document each student's level of English proficiency at every decision point throughout the process to determine if that may be related to performance difficulties.
- Base special education placement decisions on information that is valid and reliable, not on data that essentially measure or evaluate English-language skills. This means that in order to use normed tests, the tests must be:
    - administered in the student's native language and/or via nonverbal techniques with assessments and evaluation materials that are culturally and racially nondiscriminatory, unless it is clearly not feasible to do so;
    - validated for the specific purpose for which they are used;
    - administered in accordance with the publishers' instructions, including the qualifications required of translators and interpreters, if provided;
    - reflective of the factors that they purport to measure, rather than English-language proficiency skills; and
    - normed on the student's cultural group as well as the language group.
- Make decisions about eligibility and placement based on other data about the student when dependable normed test data cannot be acquired or used.
- Develop eligibility and placement procedures that include the use of information about the student's cultural, linguistic, and educational background.
- Include a written report that reflects the consideration of environmental, cultural, or economic disadvantage factors for students being considered as having a learning disability (or, in Colorado, "perceptual-communicatively disabled").

- Develop educational plans that include alternative language services and special education services when students are determined eligible for special education.

- Provide legal and procedural safeguards to the parents or guardians in their native language, either in writing or explained in a form and manner that they understand. *(New Mexico Department of Education, 1994.)*

The Individuals with Disabilities Education Act {614(b)(3)(A)} of 1997 makes it clear that tests and other evaluation materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis. Furthermore, they must be provided and administered in the child's native language or other mode of communication, unless it clearly is not feasible to do so. The IDEA states that *"In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as such needs relate to the child's IEP."* The new Colorado IEP form reflects these legal requirements.

To support the essential legal requirements, the following recommendations are helpful to ensure equity and appropriate services for students whose primary language is not English:

- Building-level pre-referral child study teams and special education staffing teams should be knowledgeable about:
    - -- the student's English language proficiency in all four skill areas (comprehension/listening, speaking, reading, and writing);
    - -- second language acquisition patterns;
    - -- challenges faced by children whose primary language is not English;
    - -- effective educational strategies for these students (include alternative language program services as part of pre-referral interventions); and
    - -- the student's language background and educational history.

- Child study and special education staffing teams should have resources available to help overcome language obstacles for parents whose primary language is not English.

- Special education staffing teams should be aware of the ethnic/linguistic distribution of students in their districts and buildings in order to compare that information to the distribution of students by ethnicity and language who are in special education. This will allow them to monitor possible over- or under-representation in special education of students whose primary language is not English.

- Although helpful for most English-speaking students, the formal use of standardized tests in English and reporting of the scores to determine eligibility is **not** recommended for students whose primary or home language is other than English (see Section III for specific testing recommendations). Placement decisions for these students should reflect an emphasis on clinical judgment utilizing informal tools and strategies to obtain information.

- More reliable sources of information about current levels of functioning than norm referenced data for many students with limited English proficiency include observations of student performance on specific tasks in classroom, social, and testing situations; interviews with the student, family, and teachers; and examination of student work samples.

- When a student has some educational experience in English and a history of speaking another language, it is best to assess the student in both languages to obtain a more accurate picture of how the student is functioning. If students are assessed in languages in which they are not proficient, such testing should be treated as additional, informal information; special education placement should not be based on the results of such testing.

- Special education services for students with limited English proficiency should be provided by someone knowledgeable about second language acquisition and cultural differences.

Free, appropriate, and equitable education for all students is an opportunity for all who live in the United States. Providing this opportunity is a challenge that comes with living in a diverse society. If teachers and administrators in Colorado acquire and use knowledge, skills, and strategies to meet the needs of culturally and linguistically diverse students, we will come a long way in meeting the needs of all students. Education innovations and instructional strategies that are effective for CLD students will benefit all students.

If special educators and service providers will accept the challenge of learning the necessary skills to sift out second language acquisition and cultural difference factors from disability factors, and then address the needs related to both, we will improve the appropriateness of special education services offered to each student with disabilities whose primary or home language is not English.

Together, we can develop teams in Colorado schools that are equipped to effectively respond to the needs of students whose primary or home language is not English—and who may have disabilities. Doing so will enrich the adults as well as benefit all students. It is a challenge well worth the effort and an opportunity we cannot ignore.

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Section II

GUIDELINES FOR THE APPROPRIATE REFERRAL OF CLD STUDENTS TO SPECIAL EDUCATION

Steps to Identify and Assess the Proficiency of Students Who are CLD

The following guidelines have been developed to facilitate timely and appropriate supports for all children from culturally and linguistically diverse backgrounds. They are based on the premise that all procedures and processes will respect the student's and family's background by considering diverse values, as well as linguistic and cultural differences. Information contained in these recommended guidelines applies to all children from birth through age 21 and their families. Clearly, these steps are influenced by the CLD student's language background and level of proficiency in English and in the language(s) spoken in the home. Another Colorado Department of Education publication, the *Handbook on Planning for Limited English Proficient (LEP) Student Success* (Durón, 1997) provides a thorough discussion of first and second language learning.

Step 1 *Parent Checklist*

All students must be surveyed at the time of enrollment to determine if the student has a primary or home language other than English (PHLOTE). This survey should be done through the administration of a home language questionnaire, also known as a parent checklist. The checklist should be designed to elicit answers that would indicate the presence of a language(s) other than English in the student's home environment. If the home language questionnaire is not completed or the responses ambiguous, a meeting (or home visit) with the parents should be conducted to obtain the required information. Sample questions may include:

- Is a language other than English used in the home?
- What was the student's first language?
- Does the student speak a language other than English?

A teacher questionnaire relating to the student's English language proficiency also may be used to supplement the information obtained in the home language questionnaire. However, this information may not override that provided by the parents.

Though not specifically required, the identification of cultural/linguistic diversity is an important aspect to consider in addition to the Parent Checklist to determine home language and cultural influences. The referring agency (for young children) or the school (for school-aged children) should request information from families. These questions may be asked by an agency/school representative, cultural mediator (Barrera, 1993), or through the use of a non-intrusive, family-friendly checklist. Sample questions may include:

- What are the languages the child hears at home?
- What are the languages the child speaks at home?

- If more than one language is spoken at home, is there one that is preferred or is used more frequently?
- How often is a language other than English spoken in the home?

Another critical question to answer is whether or not the child comes from a culturally or linguistically different background (e.g., grandparents emigrated from Japan and speak Japanese, but the rest of the family does not). If this is the case, the family is offered information regarding cultural community-based supports and resources, and in some instances may be connected with a cultural mediator. For purposes of these guidelines, a cultural mediator may be any individual who is a valued member of the child's community with knowledge and understanding of the child and family's language and culture. This individual can serve as an effective liaison between family, school, and community.

Step 2 *English Language Proficiency Assessment*

When all responses on the home language questionnaire indicate that English is the only language used by the student--and in the home, the student is considered a monolingual English speaker--procedures established by the school district for placement of the general student population should be followed. If any response on the home language questionnaire indicates the use of a language other than English by the student or in the home, then further assessment must be conducted to determine the student's level of English language proficiency. However, the presence of a language other than English does not automatically signify that the student is not competent and proficient in English. In other words, not all PHLOTE students will be limited English proficient. Results on objective assessment instruments designed to measure language proficiency (in all four skill areas of comprehension, speaking, reading, and writing) may indicate that the student is proficient in English.

Language proficiency assessments will assist in determining if the student's level of English language proficiency is sufficient to succeed in an English-only environment. The language assessment should objectively test comprehension, speaking/oral, reading comprehension, and writing skills (for students in grade 1 and under, only the listening and speaking portions of the language assessment need to be administered). While the student may be proficient in one (or more) skill areas, he or she may not be proficient in all areas. Proficiency assessment in the four skill areas should be conducted before any further referral for special educational evaluation or testing for disabilities is conducted. Language preferences and patterns should be considered in addition to formal testing.

If the assessment results indicate that a student with a primary or home language other than English is not proficient in the four language skill areas, the student is identified as being limited in English proficiency. In Colorado, the three language proficiency instruments used most frequently to assess English language proficiency are:

- *Language Assessment Scales* (published by CTB MacMillan/McGraw-Hill);
- *Idea Reading and Writing Proficiency Test* (published by Ballard and Tighe); and
- *Woodcock-Muñoz Language Survey* (published by Riverside Publishing Company).

A student proficient in all four language-skill areas of comprehension/listening, speaking, reading, and writing is identified as fully English proficient (FEP), and the procedures established by the district for placement of the general student population should be followed.

An important fact to consider is whether the family prefers to communicate in a language other than English or whether the family members use one language for certain types of interaction or with certain individuals. Because this is the first contact the family may have had with the interagency team, it is very important that the interaction be positive. The support of a cultural mediator (and interpreter, if necessary) can be invaluable in establishing rapport with the family and in identifying any family needs for multicultural/multilingual supports and services. The use of open-ended questions, non-judgmental assumptions, and other strategies (ethnographic interviewing as described by Westby, 1990) are suggested as an effective approach to gather information about the family's language preferences and patterns, and to validate the family's perspective and culture.

Step 3 *Student Placement*

For school-aged children, a student with a primary or home language other than English who is identified as fully English proficient (FEP) may be placed in the regular classroom and his or her progress monitored on an ongoing basis to determine progress in the English-only setting. On the other hand, a student with a primary or home language other than English who is identified as limited English proficient (LEP) must be provided with additional language development support and instruction in order to increase his or her English proficiency. Students must receive comprehensible content area instruction. The amount of specialized English language instruction and support will depend on the student's proficiency level and needs.

For young children birth through five or children in early childhood education programs, if it is determined that the family prefers to speak in English, an interagency or Child Find team may offer information to the family about community-based cultural supports and resources. Depending upon the age of the child, resources may include parent support groups, Head Start, and/or the Colorado Preschool Program. The family also may benefit from being connected to a cultural mediator who can provide information regarding more specific community supports (i.e., health clinics, recreation centers, public assistance, and cultural centers).

When the family prefers to communicate in a language other than English and needs multilingual/multicultural supports and services, the interagency or Child Find team should offer information to the family about cultural community-based supports and resources. Examples include parent support groups, Head Start, Colorado Preschool Program, and English as a Second Language classes (some school districts offer adult ESL education to assist parents with English language skills development to better support their children's education). It is important to connect these families with a cultural mediator, interpreter/translator, or community leader.

Step 3 may be combined with Step 4 (Concern About Learning/Behavior) and Step 5 (Classroom Interventions) in one meeting, depending upon the magnitude of the concerns. Given the family's linguistic patterns, it is of critical importance that the family learn about the process of second language acquisition and its implications for their child's development of listening, speaking, reading, and writing skills. The family may need information about options for ESL and bilingual education available in the school district and benefit from more in-depth discussion with the team regarding specific strategies related to second language acquisition and the implications for emergent literacy and learning. If there are continuing concerns, the team and family should discuss options, including initiating a multi-disciplinary developmental assessment.

Step 4 *Concern about Learning/Behavior*

If school personnel observe learning difficulties during the course of the academic year, then an informal consultation with other staff should take place. The classroom teacher(s) should consult with personnel knowledgeable in second language acquisition and the student's culture, as well as others familiar with the student.

The student's primary and English language proficiency and culture must be considered in reviewing his or her learning/behavior. Many CLD students do not have the same cultural and experiential backgrounds as their mainstream counterparts. Since the language, culture, and values acquired in the home environment have a direct impact on students' learning styles and adaptation to school, it is important to include language and culture specialists in the consultation.

When language proficiency information is not recent or complete, it is appropriate to re-assess the student's language proficiency to determine his or her current level of English language development (this is highly recommended for students in kindergarten and first grade). This re-assessment will allow the classroom teacher and Bilingual/ESL specialist to measure the student's progress. Language proficiency information is crucial in determining if the instructional program is appropriate for the student's language development stage and educational background. It is important to clarify that this is an assessment of the student's English language proficiency and skills, and not an assessment of cognitive or academic abilities. The student's performance relative to his/her LEP peers, family, and educational history also should be considered.

If no learning difficulties are observed, then no further intervention is needed. However, the student must continue to receive alternative language services until s/he is deemed proficient in the English language.

Step 5 *Classroom Interventions*

School personnel should initiate a general education student assistance team meeting. If your school does not have an established team, informal teacher meetings should be convened to review the student's progress, interaction with peers, and learning style. The team should include the student's classroom teacher(s), a second language teacher (or other personnel knowledgeable about second language acquisition), and someone familiar with the student's culture.

If a parent or community member is included as the cultural resource, the need for strict confidentiality of the proceedings must be explained. The team also may include the special education teacher, school counselor, and other school personnel who have had contact with the student. However, it is important to remember that the general education student assistance team is under the authority and responsibility of the regular education system. This is what distinguishes the pre-referral process from the actual special education referral process.

Teachers may not possess the knowledge, skills, and experience necessary to effectively meet the needs of students from diverse linguistic and cultural backgrounds. Therefore, the general education student assistance team must determine if the teacher's instructional techniques are known to be effective with limited English proficient students of similar language and cultural background before making recommendations for intervention strategies (see the *Handbook on Planning for Limited English Proficient (LEP) Student Success*, a CDE publication). The student's classroom teacher(s) should become familiar with developmental processes of second language learners and the preferred learning styles generally associated with members of the student's culture. Input from alternative language providers comparing the CLD student with his or her peers may be very important.

Prior to any special education referral, it is important to know if the student has participated in any ESL or bilingual instruction. The team should review the type of alternative language services the student has received, the length of time the student has participated in the program, and the continuity of services received. This information will assist the team in reviewing the student's developmental progress within the context of his/her educational history and to distinguish disabilities, difficulties, or challenges from lack of English language proficiency. Some suggestions for effective teaching strategies and materials adaptation for students who are culturally and linguistically diverse follow:

- Adjust the method of presentation or content by using ESL methodologies, sheltered English techniques in the content areas, nonverbal clues, and visuals and realia (objects, authentic materials, and activities related to real life); outline the material for the student prior to reading a selection; break a task into smaller subtasks; substitute a similar, less complex task for a particular assignment; and use bilingual instruction or bilingual support whenever possible.

- Develop supplemental materials such as written summaries of lessons, activities, and readings appropriate to the student's language development stage; rewrite brief sections of lessons to lower the readability level; reduce the number of pages or items on a page to be completed by the student; and develop simple study guides to complement the required materials.

- Tape-record directions for lessons and activities. To the greatest extent possible, provide directions in the student's primary language.

- Provide alternatives for responding to questions. Allowing students to respond nonverbally and/or through demonstrations will provide a greater opportunity for CLD students to demonstrate their achievement of standards in a less threatening way.

- Provide additional practice for students to ensure mastery.

- Reinforce and build upon skills in the student's first language.
  (Hoover and Collier, 1989, p. 253)

At this point, the family may need to discuss ongoing concerns, resources, and strategies to clarify the second language learning process related to the child's language pattern. The importance of emergent literacy and/or other developmental information may be shared with the family by the cultural mediator and/or other Child Find, Interagency team members.

It is important to note that team members may not possess the knowledge, skills, and experience necessary to effectively meet the needs of children from diverse linguistic and cultural backgrounds, and in turn, the cultural mediator may not possess the skills and knowledge regarding implications of the second language acquisition process, emergent literacy, and/or other developmental concerns. Thus, it is imperative that all concerned acquire and share information to ensure that families receive the information they need. Professional development should be provided for staff to help them acquire information and learn about resources, clarify roles and responsibilities, and allow time for role playing and problem solving.

The following list of strategies may be helpful to share with families to assist their young children who are in the process of developing a foundation of vocabulary, grammar, and successful communication in any language.

- Families should primarily speak to their children in their strongest language to provide appropriate language usage and model correct linguistic structures.

- Bilingual families should communicate with their children in one language at a time to avoid any confusion for young children who are just learning language. The language may change according to different daily routines, activities, and speakers.

- Families who are not fully literate are strongly encouraged to engage in reading activities with their child by describing pictures and inventing stories about the book.

- Families should tell their children stories that depict family histories and share folklore, myths, and cultural traditions.

Step 6 *Special Education Referral*

The referral process should begin with a review of the student's participation in, and duration of, an alternative language program and academic (educational) history. Crucial pieces of information include the student's language and culture; strengths and learning style; English language proficiency; and where possible, the student's primary language proficiency Other aspects to consider are classroom interventions and results (especially the effectiveness of the alternative language program); and the nature, duration, and intensity of the student's difficulties.

If there is evidence that the difficulty is significant and may be related to a disability, a referral to special education may be appropriate. Be sure that appropriate interventions and sufficient time have been provided to determine that the difficulties are not related to lack of English language proficiency. An evaluation of the effectiveness of the services that have been received is important because the lack of student progress also may be attributed to program deficiencies or a discontinuity in educational services such as a sudden switch from Spanish to English instruction or sporadic instruction by paraprofessionals who have not received proper training.

For young children, it is especially important to review the child's health, social-emotional, developmental, and pre-academic history. Furthermore, the results of any family strategies should be carefully reviewed through a multidisciplinary developmental assessment.

Step 7 *Special Education Identification Process: Assessment and Determination of a Disability*

When a special education referral is initiated, the parents or legal guardians must be notified in writing of the reason for the referral and of their procedural safeguards. They also must provide written permission before the formal assessment process is started. Under federal and state law, information provided to the parents must be in the language normally used by the parent, unless clearly not feasible to do so. For example, if the language does not have a written form, or if the parents are not able to read their language, the district shall take steps to ensure that the information is translated orally, that the parents understand the reason for the referral, and that the content of any forms or materials is presented in a comprehensible manner. **Written documentation that these steps have taken place is required**.

State and federal law requires the assurance that students be assessed by a multidisciplinary team in their native language and/or with non-verbal techniques using tests and evaluation materials that minimize cultural and racial bias. Students who cannot read, write, speak, or understand English as determined through appropriate testing may not be assigned to special education services on the basis of criteria developed solely upon the command of the English language. Tests and materials must be validated for the purposes intended. It is important to note that tests validated in English are no longer valid and reliable instruments once translated into another language. Furthermore, many English language assessments are not normed for language minority limited English proficient students. Section III provides specific recommendations for student assessment.

Once the assessment has been completed, a multi-disciplinary team, including the parent or legal guardian and the student, if appropriate, should meet to determine whether the student has a disability, and whether the disability interferes with learning to the extent that the student cannot receive reasonable benefit from general education without specialized services and supports. If the parent cannot understand the information provided orally or in written English, an interpreter or written translation must be provided.

For young children, a multidisciplinary team (including a parent or family member) needs to meet to determine whether or not the child is eligible for Part C of IDEA due to a pre-existing condition or to assessed developmental delays. Specific criteria are contained in the Part C eligibility definition. If the parents prefer to communicate in a language other than English, a translator must be provided. If the child is determined eligible under Part C, an individual family service plan (IFSP) should be developed based on the multidisciplinary assessment that identifies a designated coordinator for supports and services, community resources, outcomes, objectives, and strategies for accessing natural environments. The IFSP is considered to be a family-driven document to be signed by the parent or legal guardian once the family has worked together with the team to develop outcomes.

Step 8 *Specialized Instruction and Support*

If the student meets the criteria for eligibility for special education, then an individualized education plan is developed. The IEP should be translated into a language understood by the parent if feasible. If an oral translation is provided, it should be documented. The IEP must present levels of performance and include goals, objectives, and a description of the type and duration of the special education and related services to be offered. Placement in the least-restrictive environment is based on each student's individual needs. It is important to remember, when deciding where services will be provided, that educational placement is not determined as a result of a category or configuration of the service-delivery service system. Neither is it determined on the availability of related services.

Even though the student is identified as having disabilities and is receiving services, the district has a legal obligation to provide an alternative language program until such time as the student is identified as English language proficient on an objective language proficiency assessment. This needs to be considered in the development of the individual education plan. It is important that both special education and alternative language services be discussed during the IEP meeting to make decisions about the most appropriate services and language instruction to meet the student's needs.

Special education services may have to be delivered in a language other than English with bilingual support. As always, it is essential to document any decisions made by the IEP team regarding the nature of the special education services to be delivered and the language in which they are to be provided. Once the team has agreed upon the individual education plan, the parent or legal guardian needs to sign permission for placement in special education. The agreement to place the student should be in the language normally used by the parent unless clearly not feasible to do so.

If not a written language, the district shall take steps to ensure that the information is translated orally, that the parent states that s/he understands the content of the IEP, and that there is written documentation that these steps have taken place.

The student should receive the specialized instruction and support identified on the individual education plan. The same procedures for annual and triennial reviews are followed for CLD students with disabilities as for all other students with disabilities. Continued language accommodations for parent notifications, meetings, and student assessments need to be followed. Additionally, districts should review current placements of all PHLOTE students to ensure that appropriate assessment guidelines for second language learners were followed, and if not, to re-evaluate the students to ensure appropriate placement (see the Appendix for suggestions). Upon re-evaluation, some students may be reclassified as regular education students, in which case, a change in placement process should be followed.

For young children, family-directed supports and services are needed. The IFSP specifies family-centered supports and services that are reviewed every six months. A cultural mediator can provide support to the team in making continued language accommodations for families by acting as a communication link between staff and families, helping to explain family needs, being a continued source of information, interpreting during meetings, and providing written translations.

This section has provided a summary of the basic principles underlying the pre-referral, referral, and assessment process. Key concepts to guide your planning for students who are culturally and linguistically diverse and may have a disability are listed below.

- Students whose language is other than English have the same rights as all other students. In order to make sure that these rights are protected, the students and parents must be provided information in a language they understand.
- To the extent possible, the district should objectively assess the student's proficiency in the native language prior to referral.
- Students must be provided with the appropriate instruction and interventions based on their language needs before referral to special education.
- When assessing a student for special education, testing instruments, materials, and tools must reflect the language needs of the student. **No assessment for special education should be undertaken prior to the assessment of English language proficiency for PHLOTE students.**
- A general education student assistance team should include at least one person who is knowledgeable about second language acquisition, alternative language instruction, and the student's language and culture.
- With every referral for initial evaluation or subsequent reevaluation for special education, staff persons should document that the student has been screened for the primary or home

language, and if PHLOTE, the student must have been assessed for English language proficiency in all four areas of comprehension, speaking, reading, and writing.

- Even though the CLD student is identified as having disabilities and receives services, the district has a legal obligation to provide an alternative language program until such time as the student is identified as English language proficient on an objective language proficiency assessment.

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Section III
GUIDELINES FOR THE EVALUATION OF CLD STUDENTS

Evaluation for a Suspected Disability

As stated in Section II, the critical question regarding the referral of students who are culturally and linguistically diverse for special education assessment is whether their current academic and/or emotional difficulties are a function of some type of "genuine" disability, or alternatively, are due to inadequately developed English language skills or cultural differences.

Too often, CLD students are inappropriately referred to special education by caring teachers who are not equipped to provide effective and appropriate language enrichment and content instruction to meet their needs. For these teachers, special education may be seen as a program that will provide second language students the academic foundations necessary for future scholastic success.

On the other hand, some students genuinely in need of specialized services may not be referred to special education due to a fear of misidentifying their educational needs. School staff may also be hesitant to provide duplicative services to students with multiple needs because they question whether these services support or supplant the student's primary educational program.

The dilemma facing educators is how to identify, and appropriately serve, second language students truly in need of special education services using currently available assessment tools and generally accepted procedures. Clearly, strong and consistent pre-referral policies and practices by regular education personnel are the most important factors in identifying and assessing students (Baca, 1990).

In order to determine whether a CLD student has a disability and therefore qualifies for special education, it is necessary to gather information about how the student functions in the areas of cognition, communication, social-emotional status, physical status, academic performance, and transition/life skills/adaptive behavior. These are the same areas in which information is collected for all students evaluated for special education. To gather this information, educators typically use standardized assessment instruments. **However, with second language learners, standardized assessments often prove to be invalid predictors of the student's true functioning levels. The concern for second language learners is that the tests become a measure of the student's English language proficiency and knowledge of mainstream culture, rather than a measure of academic potential.**

Exhibit 3 is a matrix showing the information that needs to be gathered in the pre-referral phase. For each of the functioning areas, there should be more than one data source. All data should be reviewed by trained professionals in each functioning area to determine the student's strengths and needs, to review the student's past behavior and performance, and to make the best possible decisions about how to move forward to ensure an appropriate education program. It is suggested that all of the cells in Exhibit 3 be completed locally by staff who write in the assessments/procedures that are currently in place in your district. This can be used as a needs assessment and planning framework for your unit to provide a clear picture of the areas that are firmly in place as well as the areas and data sources that still need to be addressed.

Exhibit 3
Information Gathering Matrix for Special Education

Functioning Areas	Social/Emotional Behavior	Cognition	Speech/ Language	Academics	Physical	Communication	Transition/Life Skills/ Adaptive Behavior
Record Review							
Family Interview/Observation							
Classroom Interview/ Observation							
Individual Informal Tasks							
Standardized Tests							

General Assessment Guidelines

Using traditional assessments with students who have had little or no exposure to English presents special challenges. There are two primary limitations to existing testing practices for CLD students. First, the validity and reliability of tests may be unproven or unresearched for this particular population. Second, the validity and reliability may be reduced because of factors such as the limited language proficiency of the student, lack of familiarity with the content of test items, lack of social and cultural sensitivity on the part of the test administrators, and/or the student's lack of familiarity with test-taking strategies. A third limitation is that a student's performance on aptitude and achievement tests almost always yields little prescriptive information for instructional interventions (Durán, 1989). In order to overcome these shortcomings, assessment procedures should follow four directives:

1) The assessment must provide an accurate appraisal of the student's current level and mode of functioning within the context of his or her cultural background and experience.

2) The assessment must identify specific educational needs rather than focus on perceived or inferred intellectual deficits. Cummins (1989) identifies the need to shift the focus of assessment from the individual child to the child's entire learning environment.

3) The assessment must focus on learning assets and strengths as the basis for the development of new learning skills.

4) Assessment must be a dynamic, ongoing process (Dent, 1976).

Assessors must be aware of the limitations inherent in standardized assessment instruments to avoid inappropriate placement decisions. Because of the limitations of standardized assessments, evaluations of students from culturally and linguistically diverse backgrounds must include a comprehensive profile of the student's language, informal assessments, and experiential and cultural history. Exhibit 4 provides a format for collecting these essential data to ensure a free and appropriate public education.

Exhibit 4

Pre-Referral and Referral Recommendations to Ensure a Free and Appropriate Public Education for CLD Students

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- The General School Child Study or Teacher Assistance Team for each referred LEP student must include at least one person who is knowledgeable about the student's culture, the second language acquisition process, and Alternative Language Program (ALP) instruction. An example of persons knowledgeable about the student include teachers and paraprofessionals who provide ALP instruction or bilingual/ESL support.

- An English language proficiency assessment must be conducted for PHLOTE students prior to any assessment for special education.

- Staff persons should document with every referral for initial evaluation or subsequent re-evaluation for special education, that the student has been screened for the primary or home language, and, if PHLOTE, the student has been assessed for English language proficiency in the four skill areas of comprehension (oral), speaking, reading, and writing.

- A space should be included in referral forms for indicating the following:

  Primary or home language other than English? __ Yes __ No. English proficiency scores:

  Oral ____________ Date ____________ Test ____________
  Comprehension ____________ Date ____________ Test ____________
  Reading ____________ Date ____________ Test ____________
  Writing ____________ Date ____________ Test ____________

  To the extent possible, the district should assess objectively PHLOTE students' proficiency in the native language. Native language proficiency scores:

  Oral ____________ Date ____________ Test ____________
  Comprehension ____________ Date ____________ Test ____________
  Reading ____________ Date ____________ Test ____________
  Writing ____________ Date ____________ Test ____________

- The district should state an assurance in its special education procedures in order to inform all staff that it establishes/maintains criteria and procedures to ensure that LEP students are not assigned to special education programs on the basis of criteria that essentially measure and evaluate English language skills.

Ensuring an appropriate education comes depends upon ensuring assuring an appropriate assessment. Assessment results, in any functioning area, will need to be interpreted in the context of the student's language, familial, cultural, and scholastic experiences. This information may be gathered by answering the following questions (Langdon, 1989):

- **How long has the student lived in the United States?** It is important to understand the student's experiences in the United States. Is the student a recent immigrant? A refugee? Was the student the first generation born in this country or has his/her family been here for multiple generations? Is this the only location that the student has lived in the United States or has the family moved frequently? Does the student travel to his/her country of birth with any frequency?

- **How much schooling has the student received?** Cummins (1984) has posited that on the average, it takes a student with limited English proficiency from five to seven years to perform academically at par with his or her English speaking, monolingual peers. Cummins makes the distinction between cognitive academic language proficiency (CALP)–the level of language necessary to be successful in classrooms using context-reduced, abstract language–and BICS, the basic interpersonal communication skills that students who are limited in English proficiency need for social communication. Without CALP skills (e.g., recounting, defining, and questioning), lack of achievement of high standards is likely to result. More in depth discussion is provided later in this section about the relationship between CALP and BICS.

- **What type of instruction has the student received?** The assessor must eliminate instructional methodology as a factor causing the student's academic failure or lack of progress in acquiring the second language. It is important to determine if the student has received any bilingual or ESL instruction. The specific methodologies followed in these programs need to be taken into account because they vary considerably. Bilingual instruction is designed to provide content instruction in the student's primary language in addition to English language development. ESL provides vocabulary development using specific strategies to match the student's language development stage. English only instruction (commonly referred to as the *sink-or-swim* model) provides no language support for the student and is not a legitimate or legal alternative language program. Furthermore, impressions from previous teachers, attendance records, modifications of regular education programs, and results from academic testing need to be reviewed.

- **What experiences has the student had with language?** When a student does not respond readily to a particular task, the assessor has to rule out experiential factors. If the student is from a rural and/or agricultural background, s/he may not be familiar with vocabulary or concepts associated with urban settings and vice-versa. Additionally, the assessor must be aware of cultural factors that govern the student's types of language exchanges. Some students may not respond because the request is linguistically unusual or inappropriate based on his/her cultural background. For example, some students may not recount an event to a person who witnessed it since it would be culturally inappropriate to contradict what someone else saw or heard. However, the student may retell the story to a person who was not present. Therefore, retelling a story may need to be adapted by asking the student to retell it to someone not originally in the room. In addition to the student's language experiences in the school setting, the assessor should gather information on language use in the home. The student or his/her parents may have emigrated from a country where a language other than English is spoken. Even if the student or his/her parents were born in the United States, another language may commonly be used in the student's home and community. It is important to remember that CLD students may be of any race or national origin (e.g., Hispanic, Hmong, Eastern European).

- **How does the student compare with his or her peers?** It is important to determine if the student's learning rate and style differs from that of other students with similar experiential, cultural, and linguistic backgrounds. Even though each student is an individual, observing him or her in the classroom and comparing his or her work with other students from a similar background is helpful in deciding if a problem exists.

- **How does the student interact with others in the home environment? How does the student use language in the home?** Parents or caretakers should be interviewed to learn how they perceive their child. Questions to ask might be: Is s/he in any way different from siblings and performing at home as expected? What language is used during family activities and play time? What is the language of the student's parents or primary caretaker? What is the language of the media programs that the student prefers? Is this student's language use any different from his or her siblings? What is the student's level of comprehension and expression at home? If the student experiences equal difficulty at home in following directions, understanding spoken language, or expressing herself or himself, then what is observed in the school setting takes on greater significance.

- **What is the student's health and developmental history?** Because a learning or behavior problem may manifest itself in cases where there are genetic problems, malnutrition, visual and hearing difficulties, and motor or emotional turmoil, it is important to consider these factors by taking a careful look at the health and developmental history of the student. Gather data on the student's gestational, birth, and neonatal history; sibling position; developmental milestones; and medically related conditions, and hospitalizations.

There is no easy answer to the question of when a child whose primary language is not English is ready to be assessed only in English. Most language proficiency assessments only measure discrete points of language (i.e., individual vocabulary words) and, therefore, fail to provide a comprehensive picture of how the student is able to use language in a variety of situations. Furthermore, there is ample evidence in all the studies with bilingual children that when given an assessment in English, the student's primary language impacts psychometric test scores (Figueroa, 1989). Best practice, therefore, is **to consider the student's language proficiency in English and the primary or home language when assessing a PHLOTE student.** Assessments should be administered in the language(s) in which the students has attained proficiency. If the student is not proficient in English, testing in English and relying on the results as objective measures of a disability is clearly inappropriate.

If it has been determined that a student is not proficient in either language, the assessor should proceed with caution. The following safeguards are recommended:

- Determine the student's proficiency in the four skill areas in English and in the other language wherever possible.

- Determine the student's dominant language. Indicators of language dominance include the language the student responds in automatically, uses to initiate communication with speakers of the student's first language, is most comfortable using for communication, and prefers when a choice is given.

Language Dominance vs. Language Proficiency

Language Dominance is the language a person knows best and is most comfortable using. A person who is dominant in English is not necessarily proficient in English.

Language Proficiency is the measure of ***how well*** an individual can speak, read, write, and comprehend a language relative to the standard expected for native speakers of the language.

- Assess non-English dominant students in their primary language and dialect (i.e., tests normed on Mexican students contain vocabulary and idiomatic expressions which may be unfamiliar to students from Guatemala). CLD students also should be assessed in English as appropriate to give them the best chance of demonstrating success. When using a translated version of an English assessment, assessors must be aware that:

  -- psychometric properties of tests cannot be assumed to be comparable across languages or dialects;
  -- some words have different levels of difficulties and frequencies of occurrence in different languages or dialects; and
  -- test content may be inappropriate when translated with the results not reflecting objective/valid measures of the student's abilities; therefore, the results of modified assessments should be treated as one of the many sources of relevant information.

- Assess English-dominant students in English and, if appropriate, in their primary language. When determining the appropriateness of primary language testing, consider the amount and type of exposure and whether the exposure was social or academic. Oral language skills must be contrasted with the overall language proficiency needed to succeed in cognitive and academic tasks. Each professional must determine what language(s) will provide the best picture of the student's abilities. The following are some suggestions to consider in conducting assessments.

  -- In the **speech/language and cognitive** areas, assess in the home language and English.

  -- In the **academic** area, assess in the language in which the student has received academic instruction for over two years.

- Use tests that minimize cultural bias and reflect other than mainstream societal values. The norms of the dominant societal group logically cannot be used as a basis for inferring abnormal development among minority groups whose linguistic and cultural experiences differ considerably from those of majority students (Cummins, 1984). Remember, when using any standardized assessment with a second language learner, generated scores must be interpreted with caution as validity may be in question.

- Work with someone who is proficient in the student's primary language and dialect and is knowledgeable about the student's culture.

- Use multiple data sources and do not rely solely on standardized assessment data for placement decisions. Data from record reviews, interviews, observations, and informal assessments must be collected and analyzed before any placement decisions are made.
- Do not underestimate the significance of informal assessments or underutilize performance-based assessments.

Functional assessments, informal instruments, observations, and interviews will provide the *most* useful and accurate information regarding the CLD student's functioning. Clinical judgment plays a very important role in gathering and interpreting data. Assessors will need to develop the ability to use existing assessments and extract and interpret data in new ways in order to provide accurate evaluations and sound decisions. The goal should be to create a system of "least-biased assessment" in which cultural, linguistic, and experiential information is used in conjunction with the results of more formalized assessment measures. Exhibit 5 provides a summary of interpretation considerations.

Exhibit 5

Summary of Considerations in Assessment Interpretation

- Use informal measures to supplement standardized test scores. Do not identify a student as needing special education solely on the basis of test scores.

- Ascertain whether errors are typical of other students with similar backgrounds.

- Review test results with family members and/or other persons from the student's background to gain additional insights as to the student's performance.

- Interpret overall test results in a team setting. If professionals review and interpret results alone, errors are more likely.

- When writing assessment reports, be sure to include cautions and disclaimers about any departures from standard testing procedures and what effect they have on interpretation. In addition, discuss how the validity of the assessments used may have been affected. Furthermore, discuss how the student's background may have influenced testing results. *Roseberry-McKibbin (1996)*

Before any decision is made about special education placement, a multidisciplinary team, including the student (if appropriate) and his or her parents, needs to review and discuss the anecdotal and historical information gathered about the student. Translations and interpreting should be provided as necessary to ensure meaningful communication with the parents. Additionally, the results from the cognitive, physical, speech/language, communication, transition/life skills/adaptive behavior, academic, and social/emotional assessments should be presented, including appropriate cautions if the assessments were not normed and validated for the student's particular characteristics. The team must deliberate on information such as how the student's performance in all functioning areas has been influenced by acculturation, language skills, behavior mode, socio-economic background, and ethno-cultural identity. Only after reviewing all information should a special education placement be considered.

Assessing Cognitive Functioning

Assessment of the cognitive functioning of students who are culturally and linguistically diverse is a process in which formal testing must take a secondary place to clinical and professional judgment. Currently available assessment instruments, when used with non- or limited English proficient students, generally lack the validity and reliability necessary to make sound decisions based only on the generated test scores. This holds true even for assessments designed and normed on native speakers of a language.

The vast majority of assessments which are normed on monolingual speakers of languages other than English are based on the scores of those who have had little or no sustained exposure to English. Their validity for non-English speakers immersed in a predominantly English educational system (including students in bilingual programs) is highly questionable (Figueroa, 1989). **Results from traditional standardized psychometric assessments, therefore, should be viewed as samples of functional behavior and not as measures of cognitive ability.** Furthermore, it is important that the school psychologist and others who consider the cognitive functioning of second language learners place greater emphasis on clinical judgment in determining the cognitive and processing level of the student. According to Cummins:

> The psychologist's or special educator's task must be to dismantle the traditional function of psychological assessment in the educational disabling of minority students; in other words, educators must be prepared to become advocates for the child in scrutinizing critically the social and educational context within which the child has developed. This implies that the conceptual basis for assessment should be broadened so that it goes beyond psychoeducational considerations to take account of the child's entire learning environment. (Cummins, 1989)

As it is best practice with all students, it is extremely important that the school psychologist not immediately initiate a formal assessment once a student with limited English proficiency is referred. Rather, the school psychologist should adhere to the following procedures:

1. **Thoroughly review the student's records and all data collected during the pre-referral process**. In reviewing the student's records, the following questions should be asked:

- Where was the student educated? If the student was educated outside the United States, what was the educational system like?

- If the student was educated in another school system in the United States, what type of special instruction did s/he receive (e.g., bilingual, ESL)?

- Was the student ever retained? Was the student ever assessed in his or her native country for learning or developmental problems?

- What were the student's attendance patterns?

- How current and reliable is the information in the student records?

- How familiar was the person(s) who completed the records with the culture, language, and dialect of the student?

- Was language proficiency in the four skill areas thoroughly considered by staff who are knowledgeable about the student and the process of second language learning?

- Are there consistent patterns across the available information?

- Are there discrepancies in the information?

- What are the competencies of the student indicated in the records?

2. **Assure a comprehensive developmental history of the student.** A thorough developmental history on the student should have been completed. If this has not been done, a complete developmental history must be taken by the school psychologist, social worker, or an individual who is experienced in the culture and language of the student. Things to take into consideration are:

   - The student's school and migration history, including the student's pre-migration history.

   - The student's first language. When and how did the student acquire the second language? What is the proficiency of the student in his or her primary language? Second language?

   - The language used by the student when speaking to his or her parents or primary caretaker, siblings, and extended family.

3. **Determine the adequacy of the current instructional environment.** An assessment of the instructional environment is a critical component of the assessment of a second language learner. It is important that the learning environment be observed on more than one occasion with observations occurring at different times of the day. Asking the following questions will

provide valuable information in determining the instructional environment of the student who is culturally and linguistically diverse.

- Has the student--or is the student--currently receiving ESL or bilingual instruction? If yes, for how long? What instructional strategies currently are being used with the student? How well are they working?
- Does the teacher understand and/or speak the student's primary language? Is the teacher academically proficient in that language?
- Does the student receive pull-out instruction? If so, what content area instruction is missed while the student is out of the classroom?
- Is the purpose of the student's lesson understood by the student? Has the purpose been adequately explained to the student?
- What strategies does the teacher use to understand what the child really comprehends?
- What does the teacher do to involve the student? To motivate the student? Does the student have the opportunity to demonstrate knowledge and skills in a language other than English?
- How effective is the teacher in conveying his or her ideas? What modifications are made for the CLD student? Is bilingual or sheltered English instruction used in the content areas? What materials are being used with the student to support learning?
- What kind of coaching is taking place? Does the teacher provide the student with any type of feedback when the student's answers are correct? When the student's answers are wrong?
- Is the student able to do independent work? What is the teacher doing to observe how the student practices independently?
- What is the student's style of learning? Does s/he prefer to work alone or cooperatively? Is the student matched with someone who can model for the student?
- Is the student instructed in heterogenous or homogenous groupings? Does the student actively participate?
- How does the teacher assess learning? Are allowances made for students with different learning styles? Are all tasks of one type or are there a variety of assessment formats?
- What role do parents play in the education of their child? What efforts has the school made to include parents? Does the school routinely provide an interpreter? Are all materials translated into the language of the parent?

- How comfortable emotionally and culturally are school staff with the CLD student? How comfortable emotionally and culturally is the CLD student in this learning environment?

4. **Perform a diagnostic/clinical teaching cycle.** In the diagnostic/clinical teaching process, referring teachers should be asked to describe specifically what makes them think that the student has a learning problem and what they see with respect to the student's difficulty in learning. Once this is known, the school psychologist or the classroom teacher should teach that specific skill or task. Observe and record the number of times it is necessary to repeat the instruction before the student acquires the skill or performs the task. If it takes repeated efforts, ask if it is realistic for the teacher to do this in his or her classroom considering the size of the class. Determine what it will take to get the student to learn the skill or perform the task. It is important to utilize the bilingual resources that the district has in place.

If it becomes evident during this pre-assessment period that the student has learning problems that may result from a disability, it would then be appropriate to initiate the formal assessment process. However, under no circumstances should the school psychologist proceed with a more formal approach to assessment unless the previous steps have been completed.

Traditionally, school psychologists have depended heavily on formal assessments to make eligibility determinations. The assessment of second language learners requires a nontraditional approach. If they utilize the same formal assessments as those used for monolingual English-speaking students, the probability is very high that the results will be invalid and unreliable. Conversely, if formal assessment strategies are not used, there is risk of not treating second language learners equitably.

Furthermore, school psychologists have been trained to gather information from formal assessments that not only are valuable in assisting the team to determine whether a student has a disability and is eligible for special education services but often are used to help the teacher design an effective educational program. For these reasons, it is assumed that once the initial steps of a dynamic assessment are completed, except in unusual circumstances, the school psychologist will conduct some type of formal assessment. Where valid and reliable formal assessments are not available, multiple data sources, multiple observations, and documented professional judgement should be used.

If the school psychologist is to proceed with conducting some type of formal assessment, the language(s) that should be used for the assessment must be appropriate to make the assessment valid. A broad, general statement may serve as an overall guide to the question of when to use English tests to assist in determining a disability and eligibility for special education: *If the student has been instructed in English for the past seven years, it is generally considered safe to proceed with an evaluation of the student using instruments developed for English speakers.* If this has not been the case, then the following "rules of thumb" should apply:

- For Spanish speaking CLD students who are from urban Mexico or Puerto Rico, a school psychologist fluent in the language of the student should administer the Mexican version of the Wechsler Intelligence Scale for Children (WISC-RM) or the Puerto Rican version of the WISC (WISC-RP). This is especially true for the Spanish speaking monolingual student.

For other than Spanish speaking second language learners, the school psychologist may wish to pursue the possibility of the existence of a valid and reliable instrument for the population of which the student is a member. The probability of finding such instrument and a psychologist fluent in the language of the student is remote, but it should be kept in mind as a possibility.

- It is important that the learning environment be observed on more than one occasion with observations occurring at different times of the day. For Spanish speaking or bilingual students who have been in the United States for at least two years or who are from other than urban Mexico or Puerto Rico, it is recommended that a school psychologist fluent in Spanish administer in a bilingual manner a test such as the Escala de Inteligencia Wechsler para Niños (EIWN-R) that has been normed on populations in the United States. For example, with a child who speaks both English and Spanish, it is often helpful to administer the EIWN-R in conjunction with the WISC so that the measure provides information about cognitive functioning in both languages. If there are tests available for other language groups and a school psychologist is available who speaks the language, such tests may be utilized.

  Remember that when a test is administered in the student's primary lang-uage, especially if the student has been somewhat removed from instruction in that lang-uage for any length of time, there is to be expected a loss in the primary language that may very well affect how the student performs and is not an indicator of a learning problem.

If the first two options are not realistic either because of the lack of testing materials or appropriately trained school psychologists, a non-verbal test of intelligence or appropriate non-verbal sections of tests of intelligence such as the performance subtests of the WISC III, the non-verbal parts of the Stanford-Binet, or the Differential Ability Scales (DAS) should be utilized. The Universal Nonverbal Intelligence Test (UNIT) also may be considered as a tool to use with students aged five through 17. **In almost all cases of non-Spanish speaking second language learners, the school psychologist will move immediately to this step.** However, the district should try to locate appropriately trained evaluators to perform the assessments. If the district is unable to locate an appropriately trained evaluator who are proficient in the student's language and the assessments are administered by the monolingual or English speaking school psychologist, the results should be used cautiously and the reliability of the assessment questioned. Consider the following:

- While a translator may be used to facilitate the communication between the school psychologist and the child, at no time should any attempt be made to translate any standardized test into a foreign language since this will affect the norms and the validity of the test.

- When a standardized instrument is used and a score has been obtained, great caution is urged in giving or interpreting a test score for CLD students. Scores are only appropriately used when the test is administered in a standardized manner and the student approximates the population on which the instrument is normed. Additionally, if the student is suspected of having Significantly Limited Intellectual Capacity (SLIC), an adaptive behavior rating also must be obtained. Furthermore, the discrepancy ratio between ability and achievement required for eligibility as having a perceptual/communicative disability is particularly suspect for CLD students subject to non-standardized testing conditions.

- Once informal and formal information has been obtained, the school psychologist is now ready to share his or her information with other members of the team, since other assessment personnel may have valuable insights into the manner in which the student is functioning cognitively. Together, the team is then in a position to make a more accurate diagnosis of the student's learning style and the possibility of a disability. The team can then move forward with the development of an educational plan that meets the needs of the student. However, it should be remembered that the school psychologist has legal responsible for obtaining the necessary information and for making the judgment about how the student functions cognitively.

Assessing Speech and Language Functioning: Language Difference or Disability?

To determine whether a student with limited proficiency in English has a speech/language disability, differentiating a language disability from a cultural or language difference is crucial. In order to conclude that a student with limited English proficiency has a language disability, the assessor must rule out the effects of different factors that may simulate language disabilities.

No matter how proficient a student is in his or her primary or home language, if cognitively challenging native language instruction has not been continued, a regression in primary or home language abilities is likely to have occurred. Students may exhibit a decrease in primary language proficiency through:

- inability to understand and express academic concepts due to the lack of academic instruction in the primary language;
- simplification of complex grammatical constructions;
- replacement of grammatical forms and word meanings in the primary language by those I in English; and
- the convergence of separate forms or meanings in the primary language and English. *(Rice and Ortiz, 1994)*

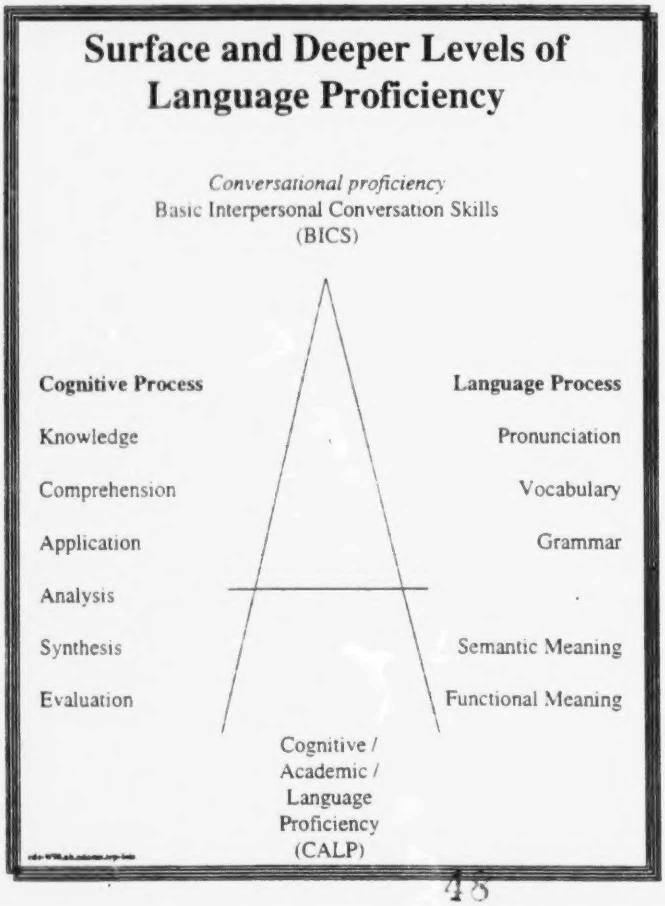
These language differences may result in a referral to special education because they do not fit the standard for either language--even though they are not the result of a disability. The assessor also must keep in mind that the loss of primary or home language competency impacts the student's communicative development in English.

must keep in mind that the loss of primary or home language competency impacts the student's communicative development in English.

The student's competence in his or her primary or home language may be interfering with the correct use of English. Culturally and linguistically diverse students in the process of acquiring English often use word order common to their primary or home language (e.g., noun-adjective instead of adjective-noun). **This is a natural occurrence in the process of second language acquisition and not a disability**. Furthermore, students may "code-switch" using words and/or syntax from both languages within the same sentence. Often this represents normal language patterns modeled in their homes or communities. The ability to code-switch, while often misinterpreted as evidence of poorly-developed language competence, is common among competent, fluent bilingual speakers and may not necessarily indicate the presence of a disability.

Experience shows that students learn a second language in much the same way as they learned their first language. Starting from a silent or receptive stage, if the student is provided with comprehensible input and opportunities to use the new language, s/he will advance to more complex stages of language use (see Exhibit 6).

Exhibit 6
Basic Interpersonal Communication Skills (BICS) and
Cognitive Academic Language Proficiency (CALP)


Surface and Deeper Levels of Language Proficiency
Conversational proficiency
Basic Interpersonal Conversation Skills
(BICS)
Cognitive Process
Knowledge
Comprehension
Application
Analysis
Synthesis
Evaluation
Language Process
Pronunciation
Vocabulary
Grammar
Semantic Meaning
Functional Meaning
Cognitive / Academic / Language Proficiency (CALP)

Cummins (1984) suggests that it takes a student, on average, one to two years to acquire basic interpersonal communicative skills (BICS)--the level of language needed for basic face-to-face conversation. This level of language use is not cognitively demanding and is highly context-embedded. On the other hand, cognitive academic language proficiency (CALP), the level of language needed for complex, cognitive tasks, usually takes on average five to seven years or more to acquire. This level of language functioning is needed to be successful in an English classroom where language is context-reduced and cognitively more challenging. If a student appears to be "stuck" in an early language development stage, this may indicate a processing problem and further investigation is warranted. Exhibit 7 summarizes the developmental stages in the acquisition of a second language.

Exhibit 7
Stages of Second Language Acquisition

Developmental Stage	Characteristics
Silent/Receptive Basic Interpersonal Communication Skills (BICS)	• hesitant, often confused and unsure • limited comprehension, that is, indicated nonverbally through gestures and actions • student begins to associate sound and meaning in the new language • student begins to develop listening skills
Early Production Basic Interpersonal Communication Skills (BICS)	• yes/no responses • one word verbal responses advancing to groupings of two or three words • focus is on key words and contextual clues • improving comprehension skills • relates words to environment
Speech Emergence Basic Interpersonal Communication Skills (BICS)	• transition from short phrases to simple sentences • errors of omission and in grammar • continuing mispronunciations
Intermediate Fluency Basic Interpersonal Communication Skills (BICS)	• transition to more complex sentences • students engage in conversation and produce connected vocabulary • errors more common as student uses language for more purposes • grammar not firmly acquired • extensive vocabulary development
Advanced Fluency Basic Interpersonal Conversational Skills (BICS) transitioning to Cognitive Academic Language Proficiency (CALP)	• student can interact extensively with native speakers • student has higher levels of comprehension, though not advanced enough for cognitively-challenging academic tasks • few errors in grammar

(Adapted from Project Talk: A Title VII Academic Excellence Program, Aurora Public Schools)

In addition to understanding the second language learning process and the impact that first language competence and proficiency has on the second language, the assessor must be aware of the type of alternative language program that the student is receiving. Questions should be considered such as: Has the effectiveness of the English instruction been documented? Was instruction delivered using ESL methodologies or was it received through regular classroom instruction? Is the program meeting the student's language development needs? The answers to these questions will help the assessor determine if the language difficulty is due to inadequate language instruction or the presence of a disability.

Speech/Language Assessment Guidelines

Accurate descriptions of a student's communicative competence in **both languages** are essential for determining if a perceived problem or difficulty in English is a true language disability. Students who are able to communicate normally in their primary or home language **do not** have a language disability. Evidence of language difficulties only in the student's second language is an indication of a language difference, not a disability. Determination of a language disability requires documentation of an intrinsic communication problem in **both** languages, except in cases where the student is so new to English that the student can only be assessed in his or her primary or home language. When assessing a student for speech/language disabilities, it is important to review the student's audiological history, in addition to considering the following:

- **Syntax and Morphology** - Syntactical and morphological errors are common in the speech of students learning a second language and usually do not indicate a language disability. A language sample is an appropriate tool to document and determine progress in English, the development of syntax (grammar), and morphological (sound units) development. Language samples that indicate growth in English language development are evidence that the errors experienced are part of the normal language acquisition process and not evidence of a language disability. Language samples should be taken over time and in a variety of settings. When working with second language learners, extra care must be taken to ensure that culturally appropriate tasks are used for the language samples.

- **Pragmatics** - To avoid bias, the functional use of language must be evaluated in relation to the student's culture. The assessor must obtain a complete language history and a description of the student's effectiveness as a communicator in the home and community. As mentioned earlier, interviews with parents or caretakers will provide insights into the student's ability to communicate effectively in a natural setting. However, before meeting with parents, the assessor should confer with someone familiar with the student's culture in order to gather culturally relevant information on language use. If no one is available, research the family's culture and be aware that in some cultures a quiet child is ideal and parents do not encourage their children to speak or engage in verbal play. Remember, if the information collected does not indicate a problem outside of the school setting, it is possible that a student's difficulty lies in using language in a more academically-oriented context.

- **Voice Disorders** - Normal voice characteristics from a student's primary language may be confused with a voice disability. It is essential that students suspected of having a voice disorder be assessed in their primary or home language. A voice disorder is present only if the quality, pitch, or intensity of the primary language results in reduced intelligibility, or is aesthetically unpleasant to speakers of that language and dialect.

- **Fluency Disorders** - Hesitations, word repetitions, slower response time, and false starts are all normal in the second language learning process. Therefore, the student should be assessed in his or her primary or home language to determine if fluency disabilities are present. Collecting a family history and identifying the age of onset for any fluency disabilities will provide important information needed to determine the severity of the disability. However, care must be taken in interpreting the results of the primary or home language assessment. As students learn a second language, a regression in primary or home language abilities and fluency may occur, especially if the student has limited need or few opportunities to communicate in that language.

- **Phonology: Articulation/Auditory Discrimination** - Phonetic differences between the student's home language and English may interfere with the acquisition of sounds in English. Therefore, some students may have difficulty pronouncing and/or discriminating certain consonants, clusters, or other sound combinations unique to English. Students who exhibit difficulties pronouncing--or discriminating--some English sounds should be evaluated in their primary or home language. An articulation or auditory discrimination problem is present only if delayed phonological development is evident in the student's primary or home language.

Clearly, assessment processes in the speech/language area must be designed to provide detailed descriptions of the student's ability to use their primary or home language in addition to English. Langdon (1989) proposed a model speech and language assessment protocol for students with limited English proficiency as found in Exhibit 8.

Exhibit 8
A Model Speech and Language Assessment Protocol for Students who are CLD

Testing:

- Description of discrete-point tests in both languages; language samples taken in different contexts (i.e., explaining rules of games, retelling stories), and interacting with a variety of people; complete assessment of language proficiency in each language and where testing and language samples were done; description of observation and the settings in which it was done.

Discussion:

- Language Proficiency: Comparisons between languages in different areas; which areas are stronger in each language; the influence of the student's experiences in each language; impact on academic performance; the degree and impact of primary or secondary language loss.
- Language Development: Status of BICS and CALP in each language and the status when English was introduced; breaks in language exposure; integration of language data with intellectual and academic data; comparison of the student with peers who have similar linguistic and school-based experiences.
- Language Samples: Transcribed excerpts in both languages; descriptions of contexts where these were taken; fluency variables (pauses, hesitations, and repetitions); pragmatic skills (turn-taking and staying on topic); code switching patterns; dialect; articulation; grammar, and complexity of sentences; voice quality and resonance; status of oral peripheral mechanism.
- Behaviors: Observations on one-to-one interactions across contexts.
- Eligibility: Rationale for determining eligibility or noneligibility for special education, using the Colorado Severity Rating Scale and the eligibility criteria on the student IEP.

Goals and Objectives:

- School Based: How each is linguistically appropriate; in which language the intervention should take place; reason for referral; suggestions for teachers.
- Home Based: Summarize these to parents personally or, if appropriate, in a letter in the primary language; specific suggestions for helping the student at home.

The following ideas for speech and language specialists provide information on how to use standardized tests to obtain qualitative information about a student's language functioning. This is not meant to be an inclusive list; but it simply offers a few ideas to demonstrate innovative ways to use tests that usually are administrated in a controlled, standardized manner. Since test scores are not used, the key is to clearly report how the tests were used and how the student responded using the report to support conclusions drawn by the examiner.

- If there are three or four prompts, cover all but the two most different and see how the student does with fewer and very clear choices. This will help ascertain whether the student grasps the concept being assessed.

- Look for patterns in the errors made by the student. Does the s/he know the answer if it is a verb, but not a noun? Are they using in-class errors or randomly giving names? Teasing out the error patterns can give information about whether the mistakes are due to a learning gap or a processing difficulty.

- Record the student's use of foreign words during the testing. If you do not know what the words mean, ask someone knowledgeable in the language. You may learn that the student knows the answer in his or her primary or home language but not in English.

- Look for cultural explanations to explain the student's answers. For example, a student may not be able to answer questions related to cold weather activities if s/he comes from a tropical area.

- Ask yourself what tasks the classroom demands and how you can use the tests you are familiar with to observe the student's performance on similar tasks. Then teach the student how to perform the tasks, using items from the test and observe how quickly and easily the student is able to learn and perform the tasks.

- Be generous in considering whether a student has answered a question correctly. Do not count grammatical mistakes as wrong answers. (In fact, measures of grammatical usage probably are not good to use to determine a disability.) If the student has the gist of the question but cannot explain the answer succinctly, count the answer as correct.

Assessors must understand the process of second language learning and the characteristics exhibited by second language learners at each stage of language development if they are to distinguish between language differences and language disabilities. The model assessment protocols presented in this document provide relevant data on the student's primary or home language and English language development through a combination of anecdotal and performance measures, in addition to standardized language proficiency assessments. This combination of data should assist the clinician in making more accurate diagnostic judgments. **Only after documenting problematic behaviors in the primary or home language and in English, and eliminating extrinsic variables as the cause of these problems, should the possibility of the presence of a language/learning disability be considered** (Rice and Ortiz, 1994).

Assessing Academic Functioning

The goal of academic assessment is to determine the student's academic strengths and weaknesses. Its purpose is to assist the teacher in helping the student become successful with academic tasks and to determine the impact of a disability on educational functioning. It does this by providing information about what the student knows and how the student learns best to assist the teacher in helping the student become successful with academic tasks.

For many second language learners, academic difficulties derive more from socio-cultural (and educational) factors than from cognitive or linguistic factors (Cummins, 1984). As noted in the introduction, CLD students face the dual challenge of simultaneously learning the English language *and* developing academic content knowledge. This often results in CLD students falling behind their monolingual English classmates in academic performance. Additionally, many CLD students have experienced interrupted education due to immigration and/or other factors and therefore, are not equipped with the skills necessary to be successful in a classroom setting. CLD students also must reconcile differences between their home culture and that of the school. Furthermore, differences in learning styles and teaching styles may be in opposition–a situation that directly impacts CLD students' success in the classroom.

Krashen (1982) suggests that there are a variety of affective filters that relate to the academic success of second language learners. He identified the following categories as variables contributing to the rate and success or failure of second language learning:

- *Motivation.* Students with high motivation generally do better in learning a second language and are able to comprehend and speak the language sooner.
- *Self-confidence.* Students with self-confidence and good self-image tend to do better in second language learning than students who are not self-confident.
- *Anxiety.* Low anxiety appears to be conducive to second language learning, whether measured as personal or classroom anxiety.

The quality of the alternative language program may impact these three factors; therefore, it is important to assess whether alternative language support has been provided to the student. When assessing academic functioning, the evaluator must determine if the deficiencies in academic knowledge and skills are attributable to the normal language-acquisition process and/or the affective variables related to language acquisition, or if there is some inefficiency in the cognitive or academic functioning of the student.

As with the other functioning areas, standardized normed-referenced assessment instruments, when used with CLD students, have problems with validity and reliability. Since currently available assessments are not valid, the question then becomes: How should the assessor gather data on the student's academic functioning? Cummins (1984) suggests:

> The teacher...has the opportunity to observe the bilingual student coping with a variety of academic demands in class and consequently has a potentially rich source of information on students' academic strengths and weaknesses. The intuitions derived from sensitive and systematic classroom observation are likely to provide as much or more information on bilingual students' academic adjustment and potential as are most current formal assessment techniques.

The classroom teacher should work closely with the district's ESL/bilingual education personnel to determine if the student's classroom behavior is consistent with the norms of the student's culture and if academic performance is appropriate for the student's current stage of English language development. Furthermore, the classroom teacher's instructional methodologies should be reviewed for effectiveness with second language learners. The assessor should consider the suggestions provided in the section on Cognitive Functioning when observing the student and teacher in the classroom setting. In addition to classroom-specific observations, the assessor should determine if the school environment is conducive to second language learning and if the staff and other students are supportive of second language learners.

If it is determined that the difficulties experienced by the student may fall outside the realm of culture, language, and/or teaching style, then additional interventions need to be tried. One approach is to provide direct instruction of the skills measured through formalized assessment instruments. This "teach-then-test" format is a diagnostic model that provides the assessor with more useful information than that provided by standardized assessment instruments. In its handbook, the Midwest National Origin Desegregation Assistance Center (1982) states that diagnostic testing:

- tries to locate student performance on an objective skills continuum and chart individual progress rather than comparing the student's performance with that of others;
- is diagnostic and prescriptive in nature which helps define instructional plans of action;
- can be implemented using any language or combination of languages;
- is less intimidating than formal testing because it is used routinely by the student's teachers in a familiar setting; and
- can be structured to measure more subtle changes in performance than do standardized tests.

If the student has only received content instruction in English throughout his/her school career, it is reasonable to conduct academic assessments in English. Even though a student may speak another language in the home, the development of cognitive academic language in the primary language will be highly arrested without exposure to concepts and content in the formalized school setting. However, if a student in pre-K through grade 1 is being assessed, an informal assessment to determine whether the student has acquired basic concepts in his or her primary or home language (i.e., numerals, shapes, colors, directional and positional concepts) should be conducted. Regardless of grade level, all students should be provided with an opportunity to exhibit their level of academic functioning both in English and their primary or home language if there is a question about the student's performance on an English assessment.

If appropriate academic tests are available in the student's language and the norming group is reflective of the student's dialect and culture, standardized academic tests may be used. In addition, standardized math tests may be used if the student is able to understand the instructions or a trained interpreter is available. For academic assessments in the English language to be appropriate, it is necessary to first determine whether the student has proficient English language skills or has attained the level of cognitive academic language proficiency necessary to understand the material being assessed. **However, with any formalized assessment, generated scores should be used judiciously and appropriate cautions should be documented.** In light of the length of time required for a student to acquire cognitive academic language proficiency in English, and the impact of affective filters on the language acquisition process, classroom observation and clinical judgment will provide more information on the student's academic potential than will the results of formalized assessment instruments.

Assessing Social/Emotional/Adaptive Behavior Functioning

Since culture and the environment in which a student lives significantly affects a student's behavior and academic growth, it must be addressed in the assessment process. School personnel should familiarize themselves with the cultural characteristics relevant to the CLD student in order to better understand his/her behavior and learning style.

The student's behavior at school may not conform to behavior expectations in the dominant society, but the same behavior might be fostered in the student's cultural or ethnic group. Data regarding the student's family members and how they are integrating into the new culture are important in order the better understand the student (Oakland County Public Schools, 1990). When determining the impact of culture and social/emotional/adaptive behavior environment on the student's behavior the following questions that should be considered in addition to medical, developmental, and social information typically obtained are:

- Was the student born outside the United States? If yes, What was the family's reason for immigrating? Was it voluntary or involuntary? Did the family spend any time in a relocation camp?

- Is the student from an urban, rural, or agricultural area?

- What was the student's age upon arrival in the United States?

- How long has the student been in the United States? In the local community?

- What is the student's educational background? If the student was educated outside the United States, what was the educational system like?

- If the student was educated in another school system in the United States, what type of special instruction did the student receive, (e.g., bilingual, ESL)?

- Was the student ever retained? Was s/he ever assessed in his or her native country for learning or developmental problems?

- Who is the student's primary caretaker or guardian? What is their level of education?

- How does the student's culture value family, authority, and education?

- How mobile has the family been? Does the family migrate for work or make frequent trips to their native country?

- What are the dynamics in the family? How large is the student's family? Who are the members? Where does the student fit with regard to birth order?
- Does the student's culture value individual expression and achievement or cooperative efforts for the benefit of the group?
- Does the student's culture value indirectness over directness?

The greater the differences between the student's culture/values and the experience of the school in meeting the needs of students of diverse cultures and backgrounds, the more difficult it may be for the student to adjust to the classroom environment. In addition to culture, experiential background impacts learning progress and behavior. Students from rural or agricultural backgrounds may be unfamiliar with activities and/or occurrences commonplace in an urban setting. Similarly, students educated in educational systems outside the United States may hold different expectations regarding classroom behavior and performance. They may not know how, or when, to ask for assistance or permission. They may be unfamiliar with silent reading or other individual activities, and therefore, they may be disruptive during individual activities. Furthermore, students with limited formal schooling may lack the knowledge and skills necessary for success in the classroom. The role of the assessor is to determine the extent to which culture and prior experiences impact the student's present behavior and achievement. The reasoning and judgment process should be documented as the rationale develops for making eligibility and service delivery decisions.

Assessing Physical Functioning

An appropriately trained professional must be responsible for gathering the information on each student's health history and current status. If the student's parents or legal guardians are able to understand and express themselves effectively in English, proceed in English. However, the person gathering the information should be sensitive to cultural issues that may arise during a health history interview. For example, a parent may refer to using herbal medicines, rather than standard pharmaceutical treatments for the child's illness. This may be a very common treatment in the family's culture, although it may be surprising to school personnel.

If the parents or legal guardians have difficulty understanding or speaking English, use a trained interpreter who is familiar with the culture, language, and dialect of the student. The interpreter also must be trained in special education procedures and terminology to be able to explain them to parents.

Assessing Transitional/Life Skills Functioning

The same information needs to be obtained about a second language learner's transition/life skills functioning as for other students. In addition, a transition planning process must be undertaken by age 14 for any student with a disability. If the student is not proficient in English, it will be important to obtain the information in the student's primary language. This may be done either by a school professional proficient in the student's primary or home language or through a trained interpreter.

Remember that most transition assessments should be functional and consider the student's performance in actual settings and situations where the skills are to be used. Observing the student in a variety of environments will yield the best information about functioning level, skills, and needs. However, to ensure that all possible aspects of adaptive behavior are considered, transition/life skills information should be gathered in the following areas:

- learning style
- vocational and recreational interests
- community proficiencies
- job readiness skills
- awareness of work options
- cultural attitudes toward work
- awareness of appropriate career training options
- decision making ability
- ability of the student to self-advocate to meet personal needs
- interpersonal skills
- residential independence and planning
- knowledge of health and insurance planning

The culture of the student should be considered when obtaining and evaluating this data. For instance, although many educators value independence for all students, in some cultures it is not considered desirable for young women to live independently. It may be necessary to consult resources in the community or at the library to obtain information about each student's particular culture.

It is important to remember that acquiring English may be the most important life skill for a second language learner. Therefore, English acquisition should be considered in the assessment of transition and in the development of an IEP.

The *Colorado Transition Manual,* published by the Colorado Department of Education is a helpful resource in the area of transition/life skill assessment and planning for all students with disabilities.

Determining Eligibility for Students With Perceptual and Communicative Disability (Learning Disability)

The category of Perceptual-Communicative Disability (PCD), also called learning disability, is a category that causes a great deal of consternation in the area of special education for students who are culturally and linguistically diverse. First, there is no one single objective test to determine whether a student has a perceptual-communicative disability. Determining eligibility requires a "best estimate" diagnosis based on information from many perspectives. Second, the concepts of cognitive and language processing deficits, upon which eligibility is based, are not always clearly nor consistently understood by evaluators. Third, it is very difficult to establish whether a student's difficulties are related to language and/or cultural differences or to some intrinsic processing disability. Thus, this category becomes a catch-all for students who are experiencing academic difficulty. In fact, this disability category contains more than 50 percent of all students in special education. Clearly, the use of this label with second language learners demands caution and requires diagnostic skill.

Recently, educators across Colorado have been honing their diagnostic and assessment skills in order to improve the quality of information and the process for determining PCD eligibility. In *Guidelines for Determining PCD Eligibility*, the Colorado Department of Education has published suggestions for a regression discrepancy formula, assessment tools, and evaluation strategies. The recommendations provide information to make the determination of eligibility as efficient, reliable, and valid as possible. However, these suggestions have been formulated for use primarily with monolingual English students and **may not be feasible for use with second language learners**.

The following key concepts are important in determining whether a bilingual student is eligible for special education with the label Perceptual-Communicative Disability.

- In order to determine that *any* student is eligible for special education under the PCD label, it is necessary to document that:

  -- there is a discrepancy between the student's estimated intellectual ability and reading, writing, or math skills;

  -- there is a language or cognitive processing difficulty; and

  -- the student's difficulties are not the cause of another disability, cultural or linguistic differences, or economic disadvantage.

  The same documentation holds true for a second language learner. However, because of the paucity of tests in other languages, the inadequate standardization of existing tests, and diverse educational and cultural backgrounds of many bilingual speakers, the data used for decision making cannot be standardized test scores. Particularly, the difference between ability and achievement as measured by English assessments is not valid when used with second language learners. For students not proficient in English, reliance on these scores leads to overidentification and misplacement in special education.

- Formal standardized tests may provide some useful information when assessors use the tests with which they are familiar to observe a student's learning strategies and processing skills as they perform the tasks. These observations provide qualitative data about the linguistic, cognitive, and academic skills of the student to help make placement decisions. The actual test scores of any standardized test **must be used with caution**, especially for making placement decisions. This is particularly true for early childhood education where standardized tests have a time limit for all children. Documentation supporting consideration of how language may have affected the assessment results should be maintained.

- For students whose primary or home language is other than English, it is especially important to collect data from a wide variety of sources. The most important sources of information for decision making are student and family interviews, record reviews, observation of students' classroom behavior and work samples over time, information from individual mini-lessons, information from structured observations of specific tasks, information obtained by using standardized tests in non-standardized ways, information from teachers and paraprofessional who can communicate effectively with the student in the primary language, and information from staff knowledgeable about the second language acquisition process.

This information should be used to consider the student's cognitive functioning, academic skills, learning style and instructional preferences. Even though information from standardized tests must be handled cautiously, there is information from such a wide variety of sources that the team should have sufficient information to determine whether the student qualifies for special education. **Because IQ scores are viewed suspiciously, if they are even available, the state recommended regression formula is not very helpful for students who are CLD**. Therefore, the language and cognitive processing behaviors indicative of PCD will be critical in determining eligibility. The assessment team will need to use its members' best diagnostic skills in order to make decisions about the difference between a processing difficulty and a language/cultural difference. Remember, **when students have processing disabilities, they will exhibit them in *both* languages.**

Colorado diagnosticians who are experienced in working with students who are culturally and linguistically diverse and who may have a disability have provided the following suggestions as useful strategies for gathering data:

- When observing in the classroom and interviewing teachers:

  --Look for growth over time in the student's ability to follow classroom routines, his/her vocabulary in English and the primary or home language, basic academic skills, and friendships with other students.

  --Consider the student's culture as one explanation for failure to do something, lack of understanding as another, and the student's unique personality as a third. Ask if the skills really are essential. If so, think about how you can structure a situation to see if the student has the skills. Don't assume that because a student isn't doing something, he or she can't do it.

  --Consider the students' social skills. Determine if s/he has the skills to participate in group activities and whether s/he has the skills to get his or her needs met.

  --Consider whether the student has had an opportunity to learn new language and social skills, or if peers or the teacher are providing too much (or too little) help to encourage growth. Determine if the student has participated in an alternative language program and if English remediation assistance has been effectively conveyed.

- When using individual mini-lessons:

  --Provide a series of mini-lessons with structured instruction and scaffolding. If the student's English is very limited, an interpreter may be necessary. Throughout the process, the teacher should observe how quickly the student is able to learn new skills, how much repetition is needed, and what type of prompts, demonstrations, and instructions are most helpful. If there are other students in the school from similar background, language, and educational experience, it is helpful to consider how this particular student performs compared with his or her peers.

--Before determining the tasks for the mini-lessons, it is critical to consider the student's academic history and current performance. The lessons should provide instruction in a skill that is within the student's ability level but has not already mastered.

- When you want a cognitive processing test that minimizes language:

--Consider using available tools that minimize the importance of language and that may be used in a standardized way to provide information about processing. Remember, it will be important to teach the task thoroughly before beginning to administer the test. Be sure the student thoroughly understands what s/he is expected to do. For example, if on a Bender Visual Motor Gestalt Test, a child is told only to copy figures, he or she may not understand the importance of exactly copying the picture. Because the task seems unimportant, he or she may produce incomplete drawings. A trained interpreter will be helpful at such times.

--Consider using subtests from commonly-used instruments such as the *Woodcock Johnson-Revised*. However, since this assessment instrument has not been normed on second language learners, **the standardized norms should not be considered valid.** The interpretation of assessment results should be reviewed cautiously and this fact should be documented. Possible subtests from the *Woodcock Johnson-R* include:

a. The ***Memory for Names Test*** will provide information about working memory and how the student uses visual cues to aid in learning new information. Because there is a feedback component included, it also is possible to determine if the student profits from feedback to improve his or her performance.

b. The ***Spatial Relations Test*** will provide information on the student's ability to work with whole-to-part relationships and is correlated to math aptitude.

c. The ***Cross-out Test*** is an assessment of psychomotor speed. If a student had difficulty with this test, s/he may have problems with completing written assignments within expected time limits and/or may have problems with timed tests. Cultural variables are important to consider with this type of assessment because some cultures teach children to be very thorough in order to be accurate. This obviously results in slower performance.

d. The ***Visual Matching Test*** is another measure of psychomotor speed. It provides information on a student's ability to work with the Arabic number system. This test is best used if the student has some familiarity with the Arabic number system.

e. The ***Sound Patterns Test*** will provide information about a student's ability to discriminate sound patterns on the basis of being the same or different. The patterns all appear in the English language, so a student may have some difficulty if certain patterns do not exist in his or her primary or home language; however, the results will give some information on how well the student can discriminate English sounds.

Two other instruments to consider are the ***Developmental Test of Visual Motor Integration* (Beery VMI)**, a measure of visual motor skills that requires the student to replicate geometric figures that is a good predictor of a student's ability to reproduce letters and numbers; and the ***Bender Visual Motor Gestalt Test*** which provides information about a student's spatial organization skills as they reproduce letters, symbols, and geometric patterns.

Although the dangers and cautions in the use of standardized tests have been discussed repeatedly in this manual, standardized tests are so integral to PCD determination, one final comment must be repeated. The information derived from this test score should be used only as an *indication* of cognitive functioning and added to all other available information before drawing conclusions. **The score should not be used in isolation in a formula as the sole factor to determine eligibility.** Documentation of this consideration must be maintained at all levels of the special education process. The following points must be followed before determining that a student qualified for special education with the PCD label.

1. Consider all the available information to identify what accommodations that the student may need in order to learn and be successful.

2. Develop realistic targets or benchmarks that would indicate successful growth.

3. Identify helpful instructional and behavioral strategies for use in the classroom, on the playground, and in the home.

4. Encourage the student's family to continue to enrich the primary language and participate in developmentally appropriate family and community activities.

5. Develop a plan with educators and family about who will do what, when, and where it will happen. Identify resources to assist in carrying out this plan.

6. Stay in close contact with teachers and the student.

7. Monitor the student's progress for a least six months to a year, particularly in language acquisition, academic growth, and socialization.

8. Reconsider eligibility after the student has been given sufficient time to benefit from alternative language instructional support and s/he is not progressing reasonably. In the reconsideration process, keep in mind the difference between BICS and CALP and the stages of second language acquisition.

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Effective Use of Interpreters and Translators

> *"Since 1974, as a result of Public Law 94-142, to receive federal funds for special education services, states and schools must provide the federal government with assurances that students' native languages are being used in the assessment and in the determination of placement for students from homes where non-English languages are spoken."* (Fradd, 1993)

Selecting Interpreters and Translators

Providing appropriate educational opportunities, nondiscriminatory evaluation and placement, and an explanation of due process procedures for non-English proficient students and their families will at times necessitate the use of the student's primary or home language. School intervention teams must have access to qualified interpreters/translators to provide appropriate and meaningful communication with CLD students and their families. The operational definitions for interpreter and translator that are used in this manual follow.

- An **interpreter** is a person who orally translates a spoken message from one language to another. The interpreter's duty is to facilitate communication and understanding between persons who are unable to communicate directly because of a language barrier. Oral interpreters must be good speakers in both English and the target language, as well as being sensitive to the cultural practices of both parties.
- A **translator** is a person who renders the content and meaning of a written message or document into its equivalent in another language in the form of a written message or document. Translators must possess good writing skills in both English and the target language.

Even though a person may be able to speak two languages, that fact in itself does not mean that s/he is qualified to be a translator or interpreter. Proficiency in English and/or the target language should not be assumed because of national origin, rather, it should be objectively assessed. In addition to proficiency both in English and the target language, an interpreter must have good listening and memory skills in order to retain the information being received. Furthermore, the interpreter must have good recall to accurately relay the information or message to the intended recipient. The interpreter/translator also must have the ability to substitute words with equivalent meanings in the target language when the specific words cannot be retrieved or translated.

Therefore, the interpreter/translator must have knowledge about the context and understand the technical and program-specific concepts being discussed. In the context of special education, interpreters/translators must be knowledgeable about special education terms and processes. Likewise, they must understand that the same words sometimes have different meanings in the two languages and that words in one language cannot always be directly translated into another when the concepts are not parallel. Furthermore, the interpreter/translator also must be bicultural. A sincere desire to help is not sufficient to establish the level of communication necessary. Cultural awareness is important in creating school/family trust. Interpreters must be aware that non-verbal cues, gestures, and body language are culturally specific and, therefore, relay messages to the family.

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Massoud (1988) has done research on planning for the translation of materials. She found that a person who can interpret orally may not necessarily be able to produce a satisfactory written translation nor is one who can produce satisfactory written translations necessarily able to interpret well orally. The skills required by an interpreter are not identical to those required by a translator and visa versa.

When selecting an interpreter or translator, the school district must ensure that the person is qualified to perform the services required. Effective interpreters and translators are people who embody the characteristics discussed below.

- Possess linguistic and cultural fluency. They should be effective speakers and writers in the student's language, dialect, and in English; be from the student's culture and/or be knowledgeable about the student's culture and that of the school; and be capable of informing team members of culturally appropriate behavior when talking to parents and interacting with the student.

- Understand the source concepts, materials, and texts. They should understand the technical vocabulary used by the special education staff; and understand what the assessments are measuring and why.

- Have had professional training. They should understand and uphold the ethics of interpreting/translating; maintain confidentiality of all proceedings; understand how to elicit the parents' and student's best response; understand test publisher's instructions and the importance of obtaining valid and reliable results; and be trained in understanding the importance of standardization and not provide assistance such as body language or other clues when assessing the student. *(Adapted from Program Suggestions for the Provision of Special Education Services to Limited English Proficient Students in Michigan Schools, Special Education Services, Michigan State Board of Education)*

Whenever possible, districts should use trained and qualified professionals to interpret and/or translate. If the district does not have anyone on staff that is trained and meets recommended proficiencies in the target language, and/or the language is uncommon, then other resources must be found. Individuals who could serve as interpreters or translators include, in order of preference:

- professional interpreters or translators from language banks or services;
- district staff members who are bilingual (though not trained in interpreting/translating);
- a member from the student's community who has been trained as an interpreter or translator, or when there is no trained interpreter or translator available;
- a family member or friend of the student's; or
- a student from the same school who is proficient in the primary language of the student. *(adapted from Assessing Asian Language Performance, 1987)*

It should be noted that the responsibility for translation falls upon the district and should not be transferred to family members or other students. Therefore, the use of family or peer translators is generally discouraged.

When using community members who speak the student's language to assist in the assessment of a student, it is critical to provide training specific to the role they will have in the assessment procedure; tasks they will administer to the student; meanings of the specialized vocabulary used by the school professionals; and the importance of maintaining confidentiality at all times.

The educator must understand that, if an untrained interpreter/translator translates literally, or inadvertently conveys a message unintended by the school professional, assessment results will be unreliable and communication with the parents and/or student may be misleading or confusing. This is especially important when dealing with concepts and assessments for exceptional students that may not exist in the student's home language or are treated differently in the student's culture. For example: *a mild disability* may be mistranslated as *a little sick* or *a little crazy* by an inexperienced interpreter. Therefore, the use of untrained interpreters and translators should be avoided since it may lead to invalid conclusions that could have a profound effect on the student's educational future.

Reliable communication and cultural understanding are essential qualities of an effective interpreter or translator. It is important that the individual has:

- effective communication skills;
- proficiency in comprehension, speaking, reading, and writing in English and the target language; and
- the ability to function effectively, with respect and sensitivity, in both cultures.

Interpreter/translator competence must be ensured since only the words of the interpreter/translator and not the words of the parent in their primary language go on record. Thus, the interpreter/translator must be neutral, trustworthy, and professional. It is essential to carefully select, prepare, and develop high levels of skills–especially when using an interpreter/translator to assist with standardized testing in a language other than English or for administering the non-verbal portions of a standardized English test. The guidelines listed below should be followed.

1. The interpreter must be trained in both the special education process (including the use of the test in the process) AND in basic psychometrics including the administration of the particular test to be used. This only can occur if the English speaking professional has reviewed the technical manual of the test to learn about psychometric properties (e.g., validity and norms) and knows how to instruct the interpreter in standardized administration of the instrument.

2. The English speaking professional must be present during the assessment to observe and record observations and may be involved in the physical administration of the nonverbal

items (e.g., administration of the Object Assembly subtest on the WISC III). Both the trained professional and the interpreter/translator need to sign the protocols and the name of the professional and the interpreter/translator should be included in the report.

3. Reference to student performance on the assessment should include a clear statement of the conditions under which the assessment was administered with specific information about any deviation from a standardized administration.

4. Scores should be used with extreme caution and results should be reported using broad bands (or confidence intervals), rather than discrete numbers. Appropriate cautions need to be stated about limits to the validity of the results (i.e., whether the test has been normed on students similar to the student being assessed).

Training Interpreters and Translators

Training interpreters and translators and training school professionals to work with the interpreter/translator is especially important. The school professional should understand the interpreter/translator's role in the assessment process and carefully guide and monitor the him/her in the assessment and communication process. The school professional should describe the assessment tasks and communicate the reasons the tasks are being employed. At times, it will be necessary to work together to modify the assessment based on linguistic and cultural information provided by the interpreter/translator. When training interpreters and translators, performance outcomes are for them to learn to:

- listen to, or read, the message carefully;
- comprehend or verify the meaning and intent of the communication;
- select the best method to convey the intent of the communication without distorting the meaning;
- modify the message, if necessary, to clearly communicate the meaning;
- deliver the message and, if necessary, impartially restate, clarify, or expand it; and
- observe the reactions and responses of the subject and recipient and verify understanding.

Furthermore, essential vocabulary and concepts should be identified and taught. If the vocabulary does not exist in the target language, acceptable alternatives should be identified prior to use. It is essential that interpreters and translators receive training in special education concepts and due process procedures from qualified special education evaluators.

Translating Assessments

If the situation arises in which objective measures are not available in the language of the student and the translation of English language assessments is needed, the following recommendations will help ensure the best possible assessment.

- Maintain a district or school list of qualified translators.
- All translations should be done thoroughly and carefully prior to assessment. Do not translate an assessment instruments on the spot. The translator must be familiar with the parameters of the assessment instrument, what it purports to measure, how it will be used, and all technical vocabulary contained therein.
- Only translate informal tests and screening instruments if permission and support has been obtained from the producers or publishers of the test; and only translate formal instruments for informal use.
- If an informal assessment procedure has been adapted or translated from English into the target language by a translator in the school district, ensure that the interpreters who are to use the instrument meet with the translators of the test to discuss the differences between the current form of the instrument and the original English language version.
- Use skilled bilingual translators who clearly understand the concepts being assessed if the screening instrument has not previously been adapted for the target language and/or dialect. At least two people should separately translate the instrument to cross-validate the accuracy of the translation. Persons who use the *back-translation method* in which the instrument is re-translated from the target language back again into English to ensure fidelity to the original text should not have participated in the original translation.
- Treat information obtained from the translated assessment instrument as descriptive results and not as formal test results. Interpreters may find it helpful to practice using the test with typical students to determine their levels of performance prior to using it with students who require assessment.
- Be sure to have the English equivalent of the test to follow along with during the testing session. Until the reliability of the instrument has been established, the translated instrument should be considered a draft. Multiple revisions may be necessary in order to develop an acceptable version in the target language.
- Remember that the objective of the assessment process is to determine the general skills and performance level of the student. It is more important to define the areas of strengths and weakness related to the learning process than to generate a specific test score with a translated text. The use of a translated test should be **to gather descriptive information about student performance,** rather than to obtain absolute scores.

- **Document all uses of a translator/interpreter and the effects in evaluation reports and on special education forms.**

In summary, the assessment, evaluation, and placement of CLD students for special education necessitates the use of interpreters and translators. In order to obtain the most reliable information, translators and interpreters must be fluent both in English and in the target language(s), be bicultural, and have extensive knowledge of the technical vocabulary and concepts used in special education.

Translators and interpreters must understand and uphold the confidentiality of the proceedings. The use of interpreters and translators, and their role in the assessment/evaluation process should be carefully considered and documented throughout the special education proceedings. Furthermore, discussions regarding the effect interpreters and translators have on assessment results, and how this information was used in the evaluation process should be documented. Reliable communication is the key to providing appropriate and meaningful educational services to students who are culturally and linguistically diverse.

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Appendices

Appendix A - Using the Student Record to Gather Information

Appendix B - Family Interview

Appendix C - Classroom Consultation, Interview, and Observation

Appendix D - Ensuring FAPE: Basic Requirements and Examples for Conducting a District File Review

Appendix E - U.S. Department of Education, Office for Civil Rights, May 15, 1970 Memorandum

Appendix F - Bibliography

Appendix A

Using the Student Record to Gather Information

Using the Student's Records to Gather Information

All information in the student's records should be evaluated with the following questions in mind:

- Is the information in the records current?
- Is the information in the records reliable?
- Have the records been translated correctly?
- How familiar was the person(s) who completed the report with the student's culture and language?
- Are there consistent patterns across the available information?
- Are there discrepancies in the information?
- If there are no current records, has every attempt been made to contact the previous school or has a parent interview been conducted?

Language Background

- What is the language(s) of the home?
- What is the student's native language proficiency in all four areas of comprehension, speaking, reading, writing?
- What is the student's proficiency in English (oral language, reading, writing)?
- What is the language preference of the student?
- Has the student received any instruction in his/her home language?
- Has the language of instruction been consistent?
- Is proficiency information complete?
- Is proficiency information current?
- What language(s) are spoken in the student's community?

Social/Emotional Background

- What is the student's cultural background?
- Was the student born in the United States? If not, how long has the student resided in the United States? Community? School?
- What experiences did the student have immigrating to the United States?
- Did the student's family immigrate voluntarily or are they refugees?
- Did the student experience unusual trauma or stress during immigration?
- How long has the student been exposed to an English speaking environment?
- How well has the student adjusted to the mainstream culture?
- How well has the student adjusted to the school culture?
- Has the student had any suspensions and/or expulsions? What were the reasons? In what grade(s)?

Academic Background

- What are the student's previous experiences with schooling?
- Have there been multiple school changes?
- What is the student's attendance record?
- Did the student attend school in his or her native country? If yes, what was the highest grade level attained?

- Was schooling consistent?
- What has been the student's response to previous instruction?
- How well has the student performed in various instructional situations?
- Has the student received ESL, bilingual instruction, or both? If yes, for how long?
- Was there a change in the primary language of instruction? If yes, how did this affect achievement?
- Has the student been referred to special education services? If yes, was the student placed in special education? Was the placement consistent with district procedures for second language learners?
- Were the assessments administered in the student's primary language?
- Has the student received any other specialized instruction (i.e., Title I, migrant education, etc.)?
- Has the student been retained? What reasons were given for retention?

Developmental/Health Background

- What is the student's health and developmental history?
- Has the student had previous and current vision and hearing screenings?
- Is there a record of repeated illness and/or excessive absences? If so, have these absences been health related or due to other factors?
- Have any prenatal abnormalities or developmental delays been noted by the parents?
- Are speech abnormalities noted in both English and the other language(s) used by the student?
- Is the student currently on medication/prescription drugs?
- Are there any known congenital or genetic abnormalities?
- Were any milestones not reached within the recommended guidelines as appropriate to the student's culture?

Appendix B

Family Interview

Suggested Questions to be Answered Through a Family Interview*

Family interviews should be conducted by appropriate, trained, qualified personnel. If the appropriate district personnel is not able to communicate with family members in their primary or home language, an interpreter or someone from the school's alternative language program should be used. As in all matters dealing with personal information, confidentiality should be maintained.

General Family History

- Has the family recently immigrated to the United States? If yes, was the immigration voluntary or does the family have refugee status?
- Did the family spend any time in relocation/refugee camps? If yes, how long?
- What is the family's length of residency in the United States?
- What is the student's place of birth? If born in the United States, how many generations have lived in this country?
- Is this the only location the family has lived in the United States or has the family moved frequently?
- With what frequency does the family travel to their country of origin?
- Who are members of the family? What are their roles and obligations within the family? What is the hierarchy of authority in the family?
- Which family members work and what is their occupation(s)?
- What educational levels have been attained by family members?

Life Cycle

- What are the criteria for the definition of stages, periods, or transitions in life? (i.e., When does a child become an adult?, At what age is it customary to marry?)
- What are the attitudes, expectations, and behaviors toward individuals at different stages in the life cycle?
- What behaviors are appropriate or unacceptable for children of various ages? How might these conflict with behaviors taught or encouraged in the school?
- How is the age of children computed? What commemoration, if any, is made of the child's birth?

Communication

- What language(s) and dialects are used in the home?
- What language(s) do the parents or other adults in the home use to communicate with each other?
- What language(s) does the child use with parents? siblings? other family members?
- What family members read and write in the primary language?
- What is the language of media in the home?
- What is the student's level of primary language comprehension and expression at home?
- How does the student's language use compare to his/her siblings?
- What language(s) does the student using during play and family activities?

- Have the parents conscientiously attempted to minimalize the use of the first language with the student? If yes, did they determine to do so or were they advised to do so? Why? By whom? When?
- What is the language(s) used in the student's community (i.e., at stores, church)?
- What language(s) does the student use with his/her playmates?
- If the child has received, or is receiving child care, what is the language(s) used by the childcare provider?

Health

- What is the student's gestational, birth, and neonatal history?
- Has the student had any medically related conditions or hospitalizations?
- Has the student had any problems with vision or hearing?
- Has the student's health and development differed from his/her siblings?
- Does the family have a traditional/homeopathic approach to health care?
- What medicinal uses are made of food or categories of food?

Education

- What is the student's educational history? What is the highest grade attained? Have there been significant gaps in the student's school attendance?
- What are the family's expectations for their child's education and for the future?
- What methods for teaching and learning are used at home (e.g., modeling and imitation, didactic stories and proverbs, direct verbal instruction)?
- Do the parents have different educational and occupational goals for boys and girls?
- Do the parents or other family members assist the student with homework?
- What is the education system like in the family's country of origin? What is the role of the teacher? the student?
- In the family's country of origin is it appropriate for students to ask questions or volunteer information? What constitutes a positive response by a teacher to a student?
- How many years is it considered normal for children to go to school? At what age do children begin school?
- What is the education history of the parent(s)?

Work and Play

- What range of behaviors are considered "work" and what are considered "play"?
- What type of work is considered prestigious and why? Why is work valued?
- What is the family's current socio-economic status? What was their socio-economic status in their country of origin?
- What are the parents' occupations?
- Does the student work outside the home? Does the family view the student's income as essential to the well-being of the family? If yes, is the student's job interfering with his/her attendance/academic performance?
- Is the family willing to have the student rearrange his/her work schedule?
- What is the family's perception of future economic and occupational growth and security?
- What recreational activities does the family enjoy?

Time and Space

- What beliefs or values are associated with concepts of time?
- How important is punctuality?
- How important is speed when performing a task?
- Are calendars and/or clocks present in the home?
- Is there a particular space in the home (or elsewhere) in which the student has privacy for doing homework or studying?

Decorum and Discipline

- What counts as discipline in terms of culture and what does not?
- What behaviors are considered socially acceptable for students of different age and gender?
- How does birth order and gender guide the parent's discipline and tolerance of behaviors?
- Who (or what) is considered responsible if a child misbehaves?
- Who has authority over whom? To what extent can one person's will be imposed on another? By what means?
- How is the behavior of children traditionally controlled? To what extent is it controlled? In what domains is it controlled?
- What is more important in the home: what one does or how one does it?

**Some parents may be reluctant to answer some or all of these questions. Therefore, a thorough explanation of the purpose of the interview is necessary. Questions about the family's immigration experiences need to be approached with sensitivity and confidentiality. The language best understood by the parents should be used.*

Appendix C

Classroom Consultation, Interview, and Observation

Classroom Consultation, Interview, and Observation

Students should be observed by appropriately trained school staff in a variety of settings, such as in the classroom, on the playground, during free time, and at home. Observation in these settings makes it possible to obtain information about the student's linguistic, social/emotional, and academic functioning in multiple contexts. In addition to observing the student, consultation with the classroom teacher can provide valuable information about the student's rate of learning and learning style, cognitive style, social skills, and classroom behavior. First and foremost, you must ask: *Does the student fully understand the language of instruction?* If yes, proceed with the questions below. If not, skip to the second section, General Classroom Observation because the typical answers to the questions in the first section on Classroom Behavior can lead to incorrect inferences and overidentification of CLD students who do not fully understand the language of instruction.

Classroom Behavior

- Does the student quietly listen to directions?
- Does the student follow oral directions accurately? written directions?
- Does the student appear attentive during discussions?
- Does the student begin assignments promptly?
- Does the student stay focused and on task?
- Does the student ask for help when needed? in an appropriate manner?
- Does the student follow classroom rules?
- Does the student participate in group activities?
- Does the student follow the rules of the playground?
- Does the student get along with others?
- How does the student interact with his or her peers? the teacher?
- Where does the student choose to sit? In the front? In areas away from the main activity, such as in the corner or back of the room?
- Does the student frequently choose to play alone?
- Does the student have any obvious physical difficulties, motor problems, coordination difficulties, or the need for any special medical equipment?

General Classroom Observation

- Is the purpose of the class/lesson clear to the student?
- Has the teacher done anything to relate current instruction to previous teaching? How is s/he making the connection to prior knowledge?
- What is the teacher doing to get and keep the student's attention?
- What is the teacher doing to motivate the student?
- How effective is the teacher as a model or explainer?
- Does the teacher use ESL/bilingual methodologies?
- What is the teacher doing to actively involve the student?
- What type of feedback/coaching is the teacher providing?
- What independent practice is provided for the student?
- Is content area instruction comprehensible to the student (i.e., Is bilingual instruction in his/her home language? Are ESL techniques and/or sheltered instruction used?)

- What opportunities are provided for generalization and transfer of knowledge and skills from the native language?
- Is learning solitary or cooperative?
- How does the teacher assess learning? What types of informal assessments are used?
- Is the assessment(s) multi-modal or paper/pencil?
- Is the classroom environment culturally comfortable for the student?
- Has the program's effectiveness for second language acquisition been evaluation? If yes, what were the results?

Student's Language Use and Communication

- What language(s) does the child use when interacting with other students? Is s/he proficient in that language?
- What language(s) does the teacher use when interacting with the students? Is s/he proficient in that language?
- What methods does the child use to relate to other students? to the teacher?
- What is the student's response time (in seconds)?
- What are the discrepancies in different functions of language?
- What are the strengths of the student?
- What are the weaknesses of the student?
- Is the student tolerant of frustration and failure?
- How anxious is the student? Why? Do you suspect that language and culture are a factor in this anxiety?

Teacher Interview

- What leads you to think this child may have difficulty with learning or behavior?
- What patterns are you observing?
- What accommodations/interventions have been tried to help the student be more successful in his/her learning?

Appendix D

Ensuring FAPE: Basic Requirements and Examples for Conducting a District File Review

Ensuring FAPE: Basic Requirements and Examples for Conducting a District File Review

As districts improve processes and skills in the area of special education for students whose primary or home language is other than English (PHLOTE), they need to consider whether previous placement decisions have been appropriate. To do so, a review of records of students currently placed in special education is necessary.

As processes and procedures for special education evaluation and placement for PHLOTE students become tighter, this intensive step-by-step review may no longer be necessary because all of the items in the review will be folded into the normal referral, assessment, and placement processes. Hopefully, this will be a one-time-only process. To ensure FAPE, a review of records for appropriate placement should find documentation that:

- ☞ the student's language background and current English language proficiency information in all four skill areas (comprehension, speaking, reading, and writing) was based on objective measures;
- ☞ appropriate interventions were considered and if appropriate, were implemented before the referral to special education;
- ☞ the student was assessed in the native language as well as in English;
- ☞ information from a variety of sources was considered in making placement decisions;
- ☞ test results accurately reflect the student's special education needs rather than his/her limited proficiency in English; and
- ☞ the placement decisions were made by a group of persons knowledgeable about the child (e.g., alternative language staff working with the student).

Evaluation for Special Education

- Tests and evaluations should be administered by staff persons who are qualified to administer special education tests in the languages required (whenever possible).
- Tests and evaluations should use only the language modalities (i.e., comprehension, speaking, reading, and writing) in which the student is objectively known to be proficient (whenever possible).
- A student's language dominance or "functional" use of language should never be used as a criterion for evaluating the validity of a special education testing instrument.
- Any group of personal making diagnostic or placement decisions should include at least one person who is knowledgeable about the student's culture.

- Any group of persons making diagnostic or placement decisions should discuss and understand the effects of language and culture on the evaluation.

Educational Placement for CLD Students

- Placement should be based on a variety of information, such as a review of existing records, the results of pre-referral interventions, curricular adaptations in an educational setting that is recognized as sound for CLD students, work samples, formal and informal assessments, and observations.
- In making placement decisions, no single person's observations or evaluation interpretations should take precedence.
- Documentation should reflect compliance with the evaluation procedures as stated above and any exceptions made to these procedures along with the rationale for the exceptions.
- Evaluation results, placement recommendations, and procedural safeguards must be explained to parents in a language that is best understood by them. To be effective, such communications may need to be translated in writing or interpreted. If the language does not have a written form, it must be orally translated.
- Individual Education Plans (IEP) should document special education goals and objectives, and the language(s) in which services will be delivered. Participation in the Alternative Language Program by CLD students with disabilities should be noted to ensure participation in both programs as appropriate to the student's needs. The IEP also may need to be translated or interpreted for parents to ensure meaningful consents.

Educational Procedures for CLD Students

- Diagnostic reports for CLD students should include an analysis of the effect of linguistic and cultural factors on educational history and learning. Reports should document whether (and how) diagnostic instruments and procedures were altered to accommodate the student and an estimate of the effect on reliability and validity that has resulted from the use of translation or interpretation in the administration of diagnostic instruments or procedures.
- The limitations on the reliability of comparisons between the results of nonverbal measures and other diagnostic measures should be discussed in the CLD student's report.
- The cross validation of formal diagnostic measures with other data available about the student should be discussed in the report on the CLD student.

On the following pages, examples are included of forms used by two districts to review the records of their students who are PHLOTE. While the examples are different in format, they both focus on the key elements that must be considered in conducting a review to ensure that a free and appropriate public education is ensured for all PHLOTE students. Each district will need to determine a process and develop forms and procedures that best reflect their unique processes and needs. Hopefully, these examples will be a good place to begin discussions and initiate local decision making.

Example A - Due Process Checklist

Instructions: This checklist is designed to ensure that CLD students already placed in special education have not received this placement on the basis of criteria that essentially measured and evaluated English-language skills. The Director of Special Education and the Director of Bilingual/ESL Education will review the student's records and indicate by checking (✓) whether the following essential components of the evaluation process are satisfactory for placement and receipt of services. If any component is checked "NO", this will necessitate an immediate re-evaluation. Those signing this form will attest to having reviewed all assessment information pertinent to the student.

SPECIAL EDUCATION PROCESS

YES	NO	ACTIVITY
___	___	Pre-Assessment
___	___	Pre-Referral (as appropriate)
___	___	Referral
___	___	Assessment in Sufficient Scope and Intensity
___	___	Staffing
___	___	IEP
___	___	Special Education Services

LEP PROCESS

YES	NO	ACTIVITY
___	___	Home Language Survey (Parent Checklist)
___	___	Teacher Checklist
___	___	Language Assessment: Understanding (name of test ______________)
___	___	Language Assessment: Speaking (name of test________________)
___	___	Language Assessment: Reading (name of test ________________)
___	___	Language Assessment: Writing (name of test ________________)
___	___	Placement/Services

☐ The student has been identified, assessed, and placed appropriately.

☐ The student needs to be re-evaluated immediately.

______________________________	______________________________
Bilingual/ESL Education Director	Special Education Coordinator
______________________________	______________________________
Special Education Assessment Team Member	Special Education Assessment Team Member
______________________________	______________________________
Other	Other

Date ______________________________

Example B - Special Education File Review Survey

Instructions: Please complete the survey indicating whether or not the following essential components of the evaluation process are satisfactory for placement and receipt of special education services. The results of the survey should be carefully reviewed by the Referral Review Committee to ensure access to services and educational equity for students whose Primary or Home Language is Other Than English (PHLOTE).

STUDENT NAME ______________________________ DATE ____________________

1. If the student's surname indicates an ethnic background other than English:

   ☐ Has a parent home survey been completed? ☐ If so, when? ____________, 19__.

   ☐ A Parent Home Survey has not been completed. ☐ Date to be completed: ________, 19__.

   Comments:

2. What effect has PHLOTE status had on the student's language development? What evidence supports your conclusion? (e.g., assessment results, documented teacher judgment)

3. What steps or actions were taken to assure the outcomes associated with identification as PHLOTE status? (e.g., parent or teacher interviews)

4. If the outcomes associated with identification as PHLOTE status are considered to be significant, what is the current level of English language proficiency? This information MUST be considered PRIOR to special education assessment.

   Language Proficiency Score ________ Instrument ________________ Date Administered ________

   What does this score mean? ____

   ____

   Teacher Interview Results ____

   ______________________________ Date(s) Conducted ________________

   Parent Interview Results ____

   ______________________________ Date(s) Conducted ________________

   Other Results (specify) ____

   ______________________________ Date(s) Conducted ________________

   Other Results (specify) ____

   ______________________________ Date(s) Conducted ________________

5. Has the Referral Review Committee considered ALL of the information on the previous page PRIOR to determining if and under what conditions assessment took place?

Previous Overall Results and Findings ______________________________

____

Cognitive Results: ______________________________
Instrument(s) ______________________________ Date Tested __________

Academic Achievement Results: ______________________________
Instrument(s) ______________________________ Date Tested __________

Language/Communication Results: ______________________________
Instrument(s) ______________________________ Date Tested __________

Other Results (specify): ______________________________
Instrument(s) ______________________________ Date Tested __________

Other Results (specify): ______________________________
Instrument(s) ______________________________ Date Tested __________

6. Does the Review Committee concur that as a result of this review, sufficient precautionary measures have been taken?
☐ Yes ☐ No

If yes is checked, specify why ______________________________

____

____

____

____

If no is checked, when has a review been scheduled for re-evaluation? ______________ Date__________

What other steps should be taken to assure an appropriate placement? ______________________________

____

____

____

____

7. Document all strategies that have been tried outside of special education and the results of various interventions/accommodations that have led to the decision to pursue special education placement. ______________________________

____

____

____

____

8. Other Comments: ______________________________

____

____

Signatures of Participants Involved in the Review:

______________________	Role or Position	______________________	Role or Position
______________________	Role or Position	______________________	Role or Position
______________________	Role or Position	______________________	Role or Position
______________________	Role or Position	______________________	Role or Position

Appendix E

U.S. Department of Education, Office for Civil Rights, May 25, 1970 Memorandum Regarding the Identification of Discrimination and Denial of Services on the Basis of National Origin

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
Washington, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT: Identification of Discrimination and Denial Of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portuguese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English

language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school district deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

Note: This camera-ready copy is a line-by-line reproduction of the original Memorandum dated May 25, 1970 and initialled by J. Stanley Pottinger, Director, Office for Civil Rights

Appendix F

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